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ELEMENTARY EDUCATION ACTS

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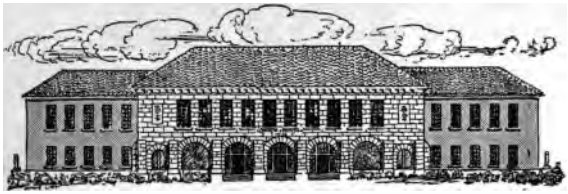

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A TREATISE

ON THE

Elementary Education Acts,

1870–1891

(WITH THE ACTS IN AN APPENDIX).

BY

WILLIAM W. MACKENZIE, M.A.,

Of Lincoln's Inn and the Northern Circuit,
Barrister-at-Law.

"Universal Education is the first great thing."—*Carlyle.*

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LONDON: PRINTED BY SHAW AND SONS, FETTER LANE.

TO THE RIGHT HONOURABLE

Sir UGHTRED KAY-SHUTTLEWORTH, Bart., M.P.,

WHOSE INTEREST IN THE SUBJECT-MATTER OF

THIS LITTLE VOLUME

IS HEREDITARY AS WELL AS PERSONAL.

66113

PREFACE.

IT is a trite but true observation that the history of public Elementary Education in England is an illustration of the law which characterises the growth of so many of our national institutions, in that it originated in the convictions and efforts of individuals or private bodies, and only when it appeared to have outgrown the means or the powers of the original promoters, did the State step in to gather up their work and place it on the basis of a national institution.

At the beginning of the present century an impulse was given to popular education by the formation of two great educational societies—the British and Foreign Schools Society in 1808, and the National Society in 1811, both supported by voluntary contributions. Previous to 1811 the work of furthering Elementary Education had been undertaken by a sub-committee of the Society for Promoting Christian Knowledge. Public attention began thenceforth to be more and more directed to the subject. In 1816 a committee of the House of Commons, of which Mr. (afterwards Lord) Brougham was chairman, reported that "they had found reason to conclude that a very large number of poor children were wholly without the means of instruction." One of the reports of this committee contains the first public assertion of the principle that the education of the people is a matter in which the State has a vital concern.

Schools were now being established and supported entirely by voluntary contributions and school fees. In 1833 the Government, for the first time, undertook a

share in the work, and made a grant of 20,000*l.* towards it. This grant was continued yearly down to 1839, and was applied in the erection of school-houses. It was distributed on the recommendation of the British and Foreign Schools Society and the National Society, and given in aid of voluntary local contributions.

In 1839 the annual grant was increased from 20,000*l.* to 30,000*l*; and on the 10th of April of that year an Order in Council was issued appointing a Committee of the Privy Council to "superintend the application of any sums voted by Parliament for the purpose of promoting public education." It was in this way that the Education Department was originally constituted, and began its work. From 1839 to 1858 the educational system grew up piecemeal: State aid and State control were as yet tentative and provisional, and education was mainly of a denominational character. According to the opinion of Sir James Kay-Shuttleworth, "the intention . . . . was to give an impulse to the growth and improvement of the system founded by the religious communions."(*a*)

In 1858 a Royal Commission, over which the Duke of Newcastle presided, was appointed to "inquire into the state of popular education in England, and to consider and report what measures, if any, were required for the extension of sound and cheap elementary instruction to all classes of the people."(*b*) It is only necessary to mention one of the recommendations of this Commission. With the object of making the teaching in schools more effective and more evenly distributed among the scholars, the Commission recommended what has since been known as "payment by results." "There is only one

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(*a*) Memorandum on Public Education (1868), by Sir James Kay-Shuttleworth, p. 8.

(*b*) Report of Duke of Newcastle's Commission, I., 570.

way," the Commission reported, "of securing this result, which is to institute a searching examination, by competent authority, of every child in every school to which grants are to be paid, with a view to ascertaining whether these indispensable elements of knowledge are thoroughly acquired, and to make the prospects and position of the teacher dependent to a considerable extent on the results of this examination."

The immediate outcome of the Report of this Commission was the celebrated Revised Code of 1862, of which the responsible author was Mr. Lowe, now Lord Sherbrooke.

The two main points of this Code were that the Parliamentary grant should be paid directly to the school managers, who were to arrange all questions of stipend with their teachers, and that the amount of the grant should depend largely on the recorded result of the individual examination of the scholars. This Code underwent protracted discussion. When it first appeared in the summer of 1861, a vigorous opposition was raised throughout the country against many of its conditions, and this agitation was not without some effect. An extension of time was granted before the Revised Code was brought into operation, and in this interval it was submitted to Parliament, and some of its original provisions were considerably modified. As in all questions of great complication, the true effect of the Revised Code is difficult to ascertain with accuracy. Its apparent tendency was to contract instruction within the strict limits of the rudiments, and thus to favour the abandonment of those higher subjects, on a due fusion of which depends the training of the intellectual faculties. There is also some evidence in the years following 1861 of a general decline not only in the extent of the subjects of instruction, but in the success with which the purely elementary subjects were taught; and some writers have roundly asserted

that the Revised Code discouraged attention to grammar, history, and geography, without doing anything to improve the instruction in elementary subjects. It has also been alleged that the scale of payments under the Revised Code necessarily resulted in a lower grant per head than had been earned under the previous system.

The Education Department, no doubt, strove from the first to obviate these drawbacks. They instructed their inspectors to judge of schools as before, by a standard embracing their "religious, moral, and intellectual merits." But so large a part of the grant depended on rudimentary knowledge that there remained a constant danger that in spite of the influence of inspectors in the opposite direction, the subjects which paid the school test would receive more than a due share of the attention of teachers. By 1867 sufficient experience of the working of the Revised Code had been gained to warrant a vigorous effort to modify it in several important particulars.

Meanwhile many attempts were being made to familiarise the public mind with the ideas that were to find a leading place in the legislation of 1870. In the Session of 1851-52 Mr. Entwistle, M.P.—one of that earnest and influential band of the friends of education in Manchester—introduced his "Manchester and Salford Borough Education Bill," an enterprise which, in some respects, reminds one of Lord John Russell's attempt to inaugurate Parliamentary reform by a Bill for the disfranchisement of the borough of Grampound. Fifteen years later and the "Education of the Poor Bill" was brought into the House of Commons by Mr. Bruce, Mr. W. E. Forster, and Mr. Egerton. During these fifteen years many who had taken part in preparing the Bill of 1851 had passed away, but several still remained to lend a helping hand to any honest endeavour to solve the

great problem of National Education. The Bill of 1867 must be regarded as the parent of Mr. Forster's Bill of 1870.

The year 1870 will ever be marked in the constitutional history of England as that in which a general provision for Elementary Education was first made by statute. Already, indeed, a vast network of Elementary Schools, provided by the various religious bodies, and aided in many cases by the State, had spread itself over England, though it had not adequately covered the land; and the Committee of Council had been constituted to aid and direct the instruction therein given. But the pivot on which the whole system of Government aid turned was that of voluntary enterprise, and the Education Department could not extend the local range of popular education any further than the voluntary zeal of the country was minded to carry it. Previous to 1870 there existed in England no public authority charged with the duty of establishing elementary schools in localities where voluntary zeal was unequal to the task, or armed with power to require that those already established should continue to be carried on and carried on effectively. It is the object of the following pages to explain the combined effect of the various measures which have from time to time been passed to remedy this defect and to improve the organisation of our system of Elementary Education. In this place, however, the scope of each of these different measures may be shortly stated. The object of Mr. Forster's great Act of 1870 was to supplement where necessary, by means of School Boards, the existing voluntary provision for efficient Elementary Education. The Act removed the obligation of giving religious instruction in schools as a condition of receiving the annual grant, and left religious instruction unfettered by any restrictions, except those imposed by the Cowper-Temple Clause (section 14), which affected

Board Schools only. It separated religious from secular training, so that the latter might be accessible to those who could not on conscientious grounds take part in the former, and that the Parliamentary grant might be made in respect of secular instruction alone. It enabled School Boards to remit fees in the case of poor scholars, and in certain circumstances, with the consent of the Education Department, to establish free schools. It armed School Boards with compulsory powers. It abolished the building grant, but largely increased the grant for the general maintenance of schools.

A short amending Act was passed in 1873. Amongst other provisions, this Act made obligatory the attendance at school of children whose parents were in receipt of out-door relief, and required the board of guardians to pay their school fees. Lord Sandon's Act of 1876 extended to all school districts the administrative machinery which had been constituted in School Board districts for working out the provisions of the Act of 1870. In 1880 Mr. Mundella's Act established universal direct compulsion by the school authority, in contradistinction to the optional compulsion of Mr. Forster's Act and the indirect compulsion of Lord Sandon's Act. Finally, in 1891, Sir William Hart-Dyke's Act, by providing a fee grant of ten shillings in respect of each scholar, if accepted by the school managers, abolished or largely reduced school fees at public elementary schools.

Such, in brief review, are a few of the salient features in the progress of National Education during the nineteenth century. From the present efficiency of elementary schools, and from the great work that has been accomplished during the last thirty years, it is difficult to realise the condition and surroundings of schools in former times. A fair idea of the deplorable state of many of them may be gained from a perusal of the older reports of Her Majesty's Inspectors of Schools. One

school, we read, "was held in a miserable room over the stable;" another "in a dark, miserable den under the town hall;" another "in a ruinous hovel of the most squalid and miserable character." The quality of instruction was likewise low. Many village schools afforded nothing more than a little practice in reading, writing, and arithmetic, with some instruction in the Scriptures and the rudiments of religious knowledge. Many of the teachers were themselves unable to read and write correctly. A large number of schools in villages and towns were kept, as a means of livelihood, by dames who were unable to impart any real instruction. All this has been changed within a single generation, and the change, though rapid, has been complete.

Of the many distinguished men who assisted in building up the edifice of public Elementary Education in this country, the late Sir James Kay-Shuttleworth stands among the foremost. He was Secretary to the Education Department during a period of trial and transition, and much of the administrative success of the Department was due to his sagacity and strength. Sir James's spirit is well represented in his son, and to Sir Ughtred Kay-Shuttleworth, therefore, I have, with his permission, dedicated this book.

I am indebted to the kindness and care of my friend, Mr. James Weir, M.A., of Lincoln's Inn, for revising the proof sheets and for many valuable suggestions.

9, King's Bench Walk, Temple,
September, 1891.

CONTENTS.

PAGE

Table of Statutes... xv
Table of Cases xxvii

PART I.

The Education Department 1

PART II.

ADMINISTRATIVE.

CHAP. 1.—Supply of Schools 4
CHAP. 2.—The School Board 10
CHAP. 3.—School Board in Metropolis 34
CHAP. 4.—Defaulting School Board 39
CHAP. 5.—Transfer and Re-transfer 43
CHAP. 6.—Returns and Public Inquiry 51
CHAP. 7.—The Board School 57
CHAP. 8.—Local Authorities 70
CHAP. 9.—Compulsory Attendance 80
CHAP. 10.—The Voluntary School 98
CHAP. 11.—The Industrial School 99
CHAP. 12.—Legal Proceedings 106

PART III.

FINANCIAL.

CHAP. 1.—Income 116
CHAP. 2.—The Parliamentary Grant... 120
CHAP. 3.—The Fee Grant 129
CHAP. 4.—Endowments... 145
CHAP. 5.—Accounts and Audit... 148

APPENDIX.

PAGE

Elementary Education Act, 1870 (33 & 34 Vict. c. 75) ... 158
Elementary Education Act, 1873 (36 & 37 Vict. c. 86) ... 210
Elementary Education Act, 1876 (39 & 40 Vict. c. 79) ... 226
Elementary Education (Industrial Schools) Act, 1879 (42 & 43 Vict. c. 48) 257
Elementary Education Act, 1880 (43 & 44 Vict. c. 23) ... 259
School Boards Act, 1885 (48 & 49 Vict. c. 38) 262
Elementary Education Act, 1891 (54 & 55 Vict. c. 56) ... 265
Elementary Education (Orders) Act, 1874 (37 & 38 Vict. c. 90)... 269

General Index 271

TABLE OF STATUTES.

		PAGE
43 Eliz. c. 2, s. 6.	Relief of Poor Act, 1601	... 97
9 Geo. 2, c. 36.	Disposition of Lands, 1735	62, 146
17 Geo. 2, c. 38.	Poor Law Act, 1743...	... 155
3 & 4 Will. 4, c. 103.	Factory Act, 1833	228, 248
4 & 5 Will. 4, c. 76.	Poor Law Amendment Act, 1834	
	ss. 99, 101	... 155
4 & 5 Vict. c. 38.	School Sites Act, 1841	62, 209
	s. 2	... 62
	s. 3	... 62
	s. 5	... 62
	s. 6	... 62
	s. 9	... 62
	s. 10	63, 69
	s. 11	... 63
	s. 14	... 63
	s. 17	27, 197
	s. 18	27, 197
7 & 8 Vict. c. 15.	Factory Act, 1844	... 228
7 & 8 Vict. c. 37.	School Sites Act, 1844	62, 209
7 & 8 Vict. c. 101.	Poor Law Amendment Act, 1844	
	s. 32	154, 155
	s. 33	... 155
	ss. 35, 36	... 154
8 Vict. c. 18.	Lands Clauses Consolidation Act, 1845	... 61, 63, 168
	s. 6	... 61
	s. 7	... 61
	s. 8	... 62
	s. 9	... 62
	s. 22...	... 64
	s. 23...	... 64
	s. 25...	... 65
	s. 27...	... 65

		PAGE
8 Vict. c. 18—*continued.*		
	s. 39...	65
	s. 41...	64, 65
	s. 42...	64
	s. 54...	65
	s. 121	64
8 & 9 Vict. c. 118.	Inclosures, 1845	
	s. 34...	60
10 & 11 Vict. c. 16.	Commissioners Clauses Act, 1847	30, 184, 213
	s. 75...	30
	s. 76...	30
	s. 77...	30
	s. 78...	30
	s. 79...	30
	s. 80...	30
	s. 81...	30
	s. 82...	31
	s. 83...	31
	s. 84...	31
	s. 85...	31
	s. 86...	32
	s. 87...	32
	s. 88...	32
	Schedule C.	30
11 & 12 Vict. c. 43.	Summary Jurisdiction Act, 1848 ...	19, 198
11 & 12 Vict. c. 91.	Poor Law Audit, 1848	
	s. 4	154
	s. 5	154
	s. 8	154
	s. 9	155
12 & 13 Vict. c. 49.	School Sites Act, 1849	62, 209
	s. 3	63
	s. 4	62
12 & 13 Vict. c. 103.	Poor Law Union Charges, &c., Act, 1849	
	s. 9	155, 156
	s. 10...	155
12 & 13 Vict. c. xciv.	... ...	36
13 Vict. c. 21.	Lord Brougham's Act, 1850	
	s. 5	81
14 & 15 Vict. c. 24.	School Sites Act, 1851	62, 209
	s. 3	63
16 & 17 Vict. c. 134.	Burials, 1853	60

PAGE

16 & 17 Vict. c. 137. Charitable Trusts Act, 1853 69, 70, 168, 195
s. 21... 70
s. 24... 70
s. 26... 70
18 & 19 Vict. c. 120. Metropolis Local Management Act, 1855 34, 35, 36, 158, 176, 202, 205
s. 16... 36
s. 172 38
s. 173 38
s. 174 38
18 & 19 Vict. c. 124. Charitable Trusts Amendment Act, 1855 ... 69
ss. 16, 39 70
19 & 20 Vict. c. 116. Vice-President of Committee of Council on Education, 1856 1
23 & 24 Vict. c. 106. Lands Clauses, 1860... ... ... 61, 68
23 & 24 Vict. c. 136. Charitable Trusts Act, 1860 69
s. 15 70
25 & 26 Vict. c. 102. Metropolis Local Management Act, 1862... 177
ss. 8, 12, 13... 38
25 & 26 Vict. c. 112. Charities, 1862 69
29 & 30 Vict. c. 90. Sanitary Act, 1866
s. 49... 40
29 & 30 Vict. c. 118. Industrial Schools Act, 1866 74, 88, 89, 99, 100, 102, 104, 172, 175, 215, 231, 232, 233, 234, 257, 258
s. 5 100
s. 11... 82
s. 12... ... ... 100, 215, 257
s. 14... 104
s. 15... 105
s. 16... 105
s. 17... 105
s. 39... 89
s. 40... 89
30 & 31 Vict. c. i. 36
30 & 31 Vict. c. 6. Metropolitan Poor Act, 1867 ... 211, 245
30 & 31 Vict. c. 106. Poor Law Amendment Act, 1867 79
s. 27 ... ... 79, 91, 110
30 & 31 Vict. c. 146. Workshop Regulation Act, 1867 ... 224, 244, 246
31 & 32 Vict. c. 37. Documentary Evidence Act, 1868... 2, 115, 196
31 & 32 Vict. c. 46. Boundary Act, 1868... 24

		PAGE
32 & 33 Vict. c. 18.	Lands Clauses Act, 1869	61, 63
32 & 33 Vict. c. 56.	Endowed Schools Act, 1869 ...	145, 193, 194
32 & 33 Vict. c. 67.	Valuation (Metropolis) Act, 1869	37, 177, 216
	s. 32...	38
32 & 33 Vict. c. 102.	Metropolitan Board of Works Loan Act, 1869	184
	s. 37...	38
32 & 33 Vict. c. 110.	Charitable Trusts Act, 1869	69, 70, 168, 195
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870 ...	2, 4, 8—10, 24, 34, 36—38, 44, 49, 53, 57, 63, 67—69, 71, 74, 80—82, 85, 89, 91—93, 100, 116, 129, 145, 158, 212, 213, 217, 225, 227, 228, 235, 237, 242, 245—249, 255, 256, 258—260, 263, 264, 267—269
	s. 3	1, 5, 34, 43, 57, 87, 97, 99, 110, 113, 120, 134, 141
	s. 4	4
	s. 5	6, 17
	s. 6	10, 39
	s. 7	5, 50, 121
	s. 7 (1)	5
	s. 7 (2)	99
	s. 7 (3)	6
	s. 7 (4)	6
	s. 8	10, 11, 15, 51
	s. 9	10, 11, 15, 55, 143
	s. 10	10, 12, 14, 39, 95
	s. 11	10, 12, 39
	s. 12	10, 12, 55, 143, 214
	s. 13	11, 51, 55
	s. 14	44, 50, 57, 146
	s. 15	57, 58, 150
	s. 16	40, 58
	s. 17	95, 112, 119
	s. 18	40, 43, 58, 59
	s. 19	43, 59, 100
	s. 20	55, 61—63, 68, 100, 215
	s. 20 (1)	63, 64
	s. 20 (2 *a*)	65

33 & 34 Vict. c. 75—*continued.*

PAGE
s. 20 (2 *b*) 65
s. 20 (2 *c*) 66
s. 20 (3) 66
s. 20 (4) 67
s. 20 (5) 67
s. 20 (6) 67
s. 20 (7) 67
s. 20 (8) 68
s. 21... ... ... 68, 69, 98
s. 22... 69
s. 23... ... ... 43, 45—51, 98, 145
s. 24... 51
s. 26... 129
s. 27... 100
s. 28... ... ... 100, 101
s. 29... ... ... 4, 18, 35
s. 30... ... ... 10, 35, 109
s. 30 (1) 108
s. 30 (2) 23
s. 30 (3) 23
s. 30 (4) 25, 109, 115
s. 30 (5) 25, 107
s. 31... ... ... 18, 35
s. 31 (1) 10, 18
s. 32... ... ... 24, 35
s. 34... ... ... 2, 19, 35
s. 35... ... ... 26, 27, 35
s. 36... ... ... 26, 35, 104, 105
s. 37... ... ... 4, 34, 153
s. 37 (1) 34
s. 37 (3) 35
s. 37 (4) 35
s. 37 (5) 35
s. 37 (6) 35, 36
s. 37 (7) 36
s. 37 (9) 24, 37
s. 37 (11) 38
s. 38... 37
s. 39... 38
s. 40... ... ... 14, 15
s. 41... ... ... 18, 55
s. 42... ... ... 14, 16

33 & 34 Vict. c. 75—*continued.*

PAGE
s. 43... 16
s. 44... 16
s. 45... 16
s. 46... 18
s. 47... 15
s. 48... 16
s. 49... ... ... 17, 55
s. 50... 18
s. 51... 17
s. 52... ... ... 17, 149
s. 53... 116
s. 54... ... ... 42, 116
s. 55... ... ... 117, 118
s. 56 (2) 118
s. 58... 34
s. 60... ... ... 151, 216
s. 60 (2) 152
s. 60 (3) 152
s. 60 (4) 153
s. 60 (5) 153
s. 60 (6) 154
s. 60 (7) 155
s. 60 (8) 155
s. 61... 156
s. 62... ... ... 40, 156
s. 63... ... ... 40, 41, 91
s. 64... ... ... 29, 41, 42
s. 65... ... ... 41, 42
s. 66... ... ... 32, 42
s. 67... ... ... 51, 52
s. 68... 52
s. 69... 52
s. 70... ... ... 52, 53, 217
s. 71... 53
s. 72... ... ... 53, 54
s. 73... ... ... 11, 18
s. 73 (1) 55
s. 73 (2) 55, 56
s. 73 (3) 56
s. 73 (4) 56
s. 74... 54, 81, 82, 89, 90, 92, 93, 110, 120
s. 74 (1) 93

33 & 34 Vict. c. 75—*continued.* PAGE

s. 74 (2) 57, 81
s. 74 (3) 81, 90, 93
s. 74 (4) 81
s. 74 (5) 81
s. 74 (6) 81
s. 75... 145
s. 76... 99
s. 77... ... ...4, 13
s. 78... 70
s. 79... ... ... 37, 118
s. 81... 33
s. 82... ... ... 33, 108
s. 83... ... ... 2, 115, 248
s. 84... 248
s. 85... 107
s. 86... 27
s. 87... ... ... 114, 118
s. 88... 114
s. 90... 114
s. 91... ... ... 18, 19, 114
s. 92... ... ... 19, 110
s. 93... 4
s. 94... 25
s. 95... 53
s. 96... ... ... 89, 99, 121
s. 97... ... ...2, 103, 121, 122, 126, 235
s. 97 (1) 125
s. 98... ... ... 9, 122
s. 99... 125
s. 100 3
Schedule I.... ... ...4, 16
Schedule II. 13, 20, 21
Schedule II., Part 1, r. 6... 24
Schedule II., Part 1, r. 9... 21
Schedule II., Part 1, r. 14 20
Schedule II., Part 1, r. 16 21
Schedule II., Part 1, r. 18 39
Schedule II., Part 1, r. 19 21
Schedule II., Part 2, r. 1... 12
Schedule II., Part 2, r. 3... 14
Schedule II., Part 3, r. 4... 36
Schedule III. 25, 58, 72, 217

		PAGE
33 & 34 Vict. c. 75—*continued.*		
	Schedule III., r. 1...	24
	Schedule III., r. 2...	24
	Schedule III., r. 5...	24
	Schedule III., r. 7...	109
	Schedule IV.	62
	Schedule V.	35
34 Vict. c. 13.	Public Parks, Schools, & Museums Act, 1871	70
34 & 35 Vict. c. 104.	Factory Act, 1871	228
34 & 35 Vict. c. 112.	Prevention of Crime, 1871	
	s. 14...	105
35 & 36 Vict. c. 21.	Reformatory and Industrial Schools Act Amendment Act, 1872	257
	ss. 8, 9	101
35 & 36 Vict. c. 27.	Elementary Education (Metropolis), 1872	
	ss. 2, 3	38
35 & 36 Vict. c. 33.	Ballot Act, 1872	20, 223
	s. 6	123
	s. 14...	22
35 & 36 Vict. c. 60.	Corrupt Practices (Municipal) Act, 1872 ...	23
36 & 37 Vict. c. 67.	Agricultural Children Act, 1873 ...	211, 256
36 & 37 Vict. c. 86.	Elementary Education Act, 1873 ...	9, 54, 145, 210, 212, 217, 227, 243, 246, 247, 248, 249, 256, 257, 258, 269
	s. 3	13, 245
	s. 7	114, 118
	s. 8	19
	s. 9	14, 23
	s. 10... ...	28, 29, 30, 60, 101, 247, 257
	s. 11...	12, 14
	s. 12...	4, 13, 145
	s. 13...	145, 146
	s. 13 (1)	146
	s. 13 (2)	146
	s. 13 (3)	146
	s. 14...	101
	s. 15...	64, 67
	s. 16...	37, 118
	s. 17...	148, 151
	s. 18...	157
	s. 19...	11, 51, 52
	s. 20...	33, 82

36 & 37 Vict. c. 86—*continued.* PAGE
s. 22... 54
s. 23... ... ... 110, 118, 243
s. 24... ... ... 110, 111, 112, 118, 243
s. 25... ... ... 111, 114, 243
s. 26... 25
s. 28... ... ... 177, 184, 185, 186, 195, 197, 198, 202, 206, 207
Schedule II. 20
Schedule III. 24, 25
37 Vict. c. 9. Public Works Loans Act, 1874
s. 2 29
37 & 38 Vict. c. 39. Elementary Education (Wenlock) Act, 1874 4
37 & 38 Vict. c. 44. Factory Act, 1874 ... ... 228, 248
37 & 38 Vict. c. 38. Births and Deaths Registration Act, 1874 ... 256
37 & 38 Vict. c. 90. Elementary Education (Orders) Act, 1874 ... 2
38 Vict. c. 23. Stamps, 1875
s. 14... 26
38 & 39 Vict. c. 83. Local Loans Act, 1875 29
38 & 39 Vict. c. 89. Public Works Loans Act, 1875 ... 29, 60, 61, 101, 232, 247, 258
39 & 40 Vict. c. 79. Elementary Education Act, 1876 ... 40, 42, 53, 71, 74, 79, 80, 82, 83, 85, 87, 90, 91, 100, 103, 126, 128, 129, 226, 257, 258, 259, 260, 261, 265, 267, 268, 269
s. 4 83
s. 5 ... ... 75, 85, 96
s. 5 (2) 83
s. 6 83
s. 7 ... ...53, 71, 72, 74, 80, 85, 103
s. 9 ... ... 75, 87
s. 9 (1) 86
s. 9 (2) 86, 93
s. 9 (3) 86
s. 10... ... ... 120, 171
s. 11... ... ... 87, 88, 106, 107, 112
s. 11 (1) 87, 96
s. 11 (2) 87
s. 12... ... ... 88, 105, 106
s. 12 (1) 88
s. 12 (2) 88
s. 13... ... ... 74, 89

39 & 40 Vict. c. 79—*continued.* PAGE

s. 14... ... ... 89, 106
s. 15... ... ... 28, 29, 32, 100, 101, 257
s. 16... ... ... 100, 102, 103, 106, 144
s. 16 (1) 102
s. 16 (2) 102
s. 16 (3) 102
s. 16 (4) 103
s. 17... 103
s. 18... 129
s. 19... 200
s. 19 (1) 128
s. 19 (2) 127
s. 20... 124
s. 21... ... ... 74, 89, 90, 92
s. 23... 90
s. 24... ... ... 85, 90
s. 25... 111
s. 26... ... ... 54, 75, 91
s. 27... ... ... 40, 42, 75, 91
s. 28... 73
s. 29... 76
s. 31... ... ... 73, 76, 101, 258
s. 32... ... ... 72, 74, 92
s. 33... ... ... 71, 74, 78, 79, 85, 92
s. 34... ... ... 73, 79, 91, 110
s. 35... 120
s. 36... ... ... 79, 104
s. 37... ... ... 78, 110, 114
s. 38... 112
s. 39... 114
s. 40... 120
s. 41... 33
s. 42... ... ... 25, 60
s. 43... ... ... 53, 74
s. 45... ... ... 2, 115
s. 47... ... ... 75, 83, 113
s. 48... ... ... 83, 87, 130
s. 49... ... ... 4, 77, 78
s. 50... 110
s. 52... ... ... 81, 171, 204, 206, 211
Schedule I.... ... ... 83, 84
Schedule II. 74
Schedule II., r. 2 206

		PAGE
39 & 40 Vict. c. 79—*continued.*		
	Schedule II., r. 3	72
	Schedule II., r. 5	72
	Schedule II., r. 6	72
	Schedule III.	21, 206
41 & 42 Vict. c. 16.	Factory and Workshop Act, 1878	228, 349, 260
	s. 107	228, 249
42 Vict. c. 61.	District Auditors Act, 1879	
	s. 4	151
	s. 11...	185
	Schedule I.	151
42 & 43 Vict. c. 48.	Elementary Education (Industrial Schools) Act, 1879	257
	s. 2	101
	s. 3	32, 101, 102
	s. 4	79, 101
43 & 44 Vict. c. 15.	Industrial Schools Act Amendment Act, 1880.	
	s. 1	104
43 & 44 Vict. c. 23.	Elementary Education Act, 1880 ...	71, 80, 81, 83, 89, 90, 91, 93, 259
	s. 1	130
	s. 2	40, 42, 71, 84, 90, 91, 92
	s. 3	32, 89
	s. 4	73, 74, 75, 110, 112, 237
	s. 5	120, 171
	s. 6	89, 237, 250, 252, 253
45 & 46 Vict, c. 9.	Documentary Evidence Act, 1882 ...	115, 196
45 & 46 Vict. c. 50.	Municipal Corporations Act, 1882 ...	262, 263, 264
45 & 46 Vict. c. 60.	Labourers' Dwellings Act, 1882	262
46 & 47 Vict. c. 39.	Statute Law Revision Act, 1883 ...	29, 211, 212, 214, 216, 217, 219, 221, 225, 229, 236, 248, 256
46 & 47 Vict. c. 51.	Corrupt and Illegal Practices Prevention Act, 1883	
	s. 6 (3)	19
	s. 10...	19
	s. 11...	19
	s. 22...	19
	s. 23...	19
	s. 32...	19
	s. 36...	18
	s. 64...	19

		PAGE
47 & 48 Vict. c. 70.	Corrupt and Illegal Practices Act, 1884 ...	23
	s. 3	19
	s. 22...	19
	s. 36...	18, 19
	s. 38...	174
48 & 49 Vict. c. 38.	School Boards Act, 1885	262, 264
	s. 2	209
51 & 52 Vict. c. 41.	Local Government Act, 1888	
	s. 40...	34, 37, 38
52 & 53 Vict. c. 63.	Interpretation Act, 1889	158
	s. 12 (6)	1, 158
54 & 55 Vict. c. 56.	Elementary Education Act, 1891 ...	128, 129, 130, 235, 265
	s. 1	136
	s. 1 (1)	129, 130, 131, 135
	s. 1 (2)	131, 135
	s. 1 (3)	128
	s. 2 (1)	132, 140
	s. 2 (2)	131, 132
	s. 3	132, 133
	s. 4	135, 140, 141
	s. 4 (2)	141
	s. 4 (3)	141
	s. 5	131, 142, 143, 144
	s. 6	144
	s. 7	142
	s. 9	130
	s. 10...	131, 141
	s. 11...	129, 172, 235

TABLE OF CASES.

PAGE

Attorney-General *v.* Parker (1747), 3 Atk. 597 36
Austin *v.* Guardians of Bethnal Green (1874), L. R. 9 C. P. 91; 43 L. J. M. C. 100; 29 L. T. 807; 22 W. R. 406 108

Bailey, The School Attendance Committee of Belper Union *v.* (1882), 9 Q. B. D. 259; 51 L. J. M. C. 91; 46 J. P. 438 ... 93
Bates, *Ex parte, Re* Burnham National Schools (1873), L. R. 17 Eq. 241; 43 L. J. Ch. 340; 29 L. T. 495; 20 W. R. 198 ... 46
Belper Union, School Attendance Committee of, *v.* Bailey (1882), 9 Q. B. D. 259; 51 L. J. M. C. 91; 46 J. P. 438 93
Bethnal Green (Guardians of), Austin *v.* (1874), L. R. 9 C. P. 91; 43 L. J. M. C. 100; 29 L. T. 807; 22 W. R. 406 ... 108
Bettison, *In re* (1874), L. R. 4 Ecc. 294 60
Birmingham (Town Council of), Reg. *v.* (1873) (unreported) ... 119
Bradley *v.* Sylvester (1871), 25 L. T. 459 27
Bromwich West (Overseers of), West Bromwich School Board *v.* (1884), 13 Q. B. D. 929; 53 L. J. M. C. 67, 153; 32 W. R. 866; 48 J. P. 549, 808 70
Buckee, Skinner *v.* (1824), 3 B. & C. 6 19
Burnett, Hance *v.* (1880), 45 J. P. 54 98
Burnham National Schools, *Re, Ex parte* Bates (1873), L. R. 17 Eq. 241; 43 L. J. Ch. 340; 29 L. T. 495; 22 W. R. 198 ... 46

Castle Sowerby (Overseers of), *In re;* and *In re* The Guardians of Penrith Union. Reg. *v.* Vane (1882), 51 L. J. M. C. 114; 47 L. T. 21; 47 J. P. 69 73
Charlton, The Mayor of Ludlow *v.* (1840), 6 M. & W. 815 ... 108
Church *v.* Imperial Gaslight Company (1837), 6 A. & E. 846 ... 108
Clarke *v.* School Board for London (1874), L. R. 9 Ch. App, 120 61
Cobden, De Souza *v.* (1891), 1 Q. B. 687; 60 L. J. Q. B. 523; 55 J. P. 375, 565 23
Clifton School Board, Scott *v.* (1884), 14 Q. B. D. 500 109
Cook *v.* Plaskett (1882), 46 L. T. 383; 47 J. P. 265 82
Crawford, Saunders *v.* (1882), 9 Q. B. D. 612; 51 L. J. Q. B. 460; 46 L. T. 420; 46 J. P. 344 96
Conybeare *v.* London School Board (1891), 1 Q. B. 118; 60 L. J. Q. B D. 44; 55 J. P. 151 ... ... 20, 204

PAGE

Darlington, *Re* The Guardians of (1875), 32 L. T. 320 246
Delane *v.* Hillcoat (1829), 9 B. & C. 310 27
Derby, West (Overseers of), Reg. *v.* (1875), L. R. 10 Q. B. 293; 44 L. J. M. C. 98; 32 L. T. 400 102
De Souza *v.* Cobden (1891), 1 Q. B. 687; 60 L. J. Q. B. 533; 55 J. P. 375, 565 23
Dudley School Board, Reg. *v.* (1877) (unreported)... 19
Duggan, London School Board *v.* (1884), 13 Q. B. D. 176; 53 L. J. M. C. 104; 32 W. R. 768; 48 J. P. 742... 94

Eaton, Reg. *v.* (1881), 8 Q. B. D. 158; 51 L. J. M. C. 31; 46 L. T. 663; 30 W. R. 335; 46 J. P. 231 ... ... 79, 91, 110

Fairhurst, Hance *v.* (1882), 51 L. J. M. C. 139; 47 J. P. 53 ... 98
Faulconer, School Board for London *v.* (1878), 8 Ch. D. 571; 48 L. J. Ch. 41; 38 L. T. 636; 26 W. R. 652 147
Finnis, Reg. *v.* (1859), 28 L. J. M. C. 201; 5 Jur. (N.S.) 971 ... 155
Fortnum, Hance *v.* (1882), 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 229; 31 W. R. 271; 47 J. P. 325 96

German and Others, Reg. *v.* (1891) (unreported) 82
Greenwich District Board of Works, School Board for London *v.* (unreported) 119

Hains, Rex *v.* (1695), Comb. 887 88
Hance *v.* Burnett (1880), 45 J. P. 54 98
Hance *v.* Fairhurst (1882), 51 L. J. M. C. 139; 45 J. P. 53 ... 98
Hance *v.* Fortnum (1882), 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 229; 31 W. R. 271; 47 J. P. 325 96
Harvey, London School Board *v.* (1879), 4 Q. B. D. 451; 48 L. J. M. C. 130; 27 W. R. 786 88
Haycock, Morgan *v.* (1880), 44 J. P. 199 112
Hillcoat, Delane *v.* (1829), 9 B. & C. 310 27
Hunter *v.* Johnson (1884), 13 Q. B. D. 225; 53 L. J. M. C. 182; 32 W. R. 857; 48 J. P. 663 ... ... 92, 107

Imperial Gaslight Company, Church *v.* (1837), 6 A. & E. 846 ... 108

Jackson, London School Board *v.* (1881), 7 Q. B. D. 502; 50 L. J. M. C. 134; 30 W. R. 47; 45 J. P. 750 97
Johnson, Hunter *v.* (1884), 13 Q. B. D. 225; 53 L. J. M. C. 182; 32 W. R. 857; 48 J. P. 663 ... ... 92, 107
Jones, *In re* (1872), L. R. 13 Eq. 336; 41 L. J. Ch. 367; 20 W. R. 395 202

PAGE

London School Board, Clarke *v.* (1874), L. R. 9 Ch. 120 ; 43 L. J. Ch. 421 ; 29 L. T. 903 ; 22 W. R. 354... 61
London School Board, Conybeare *v.* (1891), 1 Q. B. 118 ; 60 L. J. Q. B. 44 ; 55 J. P. 151 ... ... 20, 204
London School Board *v.* Duggan (1884), 13 Q. B. D. 176 ; 53 L. J. M. C. 104 ; 32 W. R. 768 ; 48 J. P. 742 94
London, School Board for, *v.* Greenwich District Board of Works (unreported) 119
London School Board *v.* Harvey (1879), 4 Q. B. D. 450 ; 48 L. J. M. C. 130 ; 27 W. R. 786 88
London, School Board for, *v.* Jackson (1881), 7 Q. B. D. 502 ; 50 L. J. M. C. 134 ; 30 W. R. 47 ; 45 J. P. 750 97
London School Board, *Ex parte*, *In re* Murphy (1877), 2 Q. B. D. 397 ; 46 L. J. M. C. 193 ; 36 L. T. 698 ; 25 W. R. 536 ... 112
London, School Board for, The National Society *v.* (1874), L. R. 18 Eq. 608 ; 44 L. J. Ch. 229 ; 31 L. T. 22 ; 23 W. R. 2 48
London, School Board for, Rolls *v.* (1884), 27 Ch. D. 639 ; 51 L. T. 567 ; 33 W. R. 129 64
London School Board *v.* Wood (1885), 15 Q. B. D. 415 ; 54 L. J. M. C. 145 ; 54 L. T. 88 ; 50 J. P. 54 95
London School Board *v.* Wright (1884), 12 Q. B. D. 578 ; 53 L. J. Q. B. 266 ; 50 L. T. 606 ; 32 W. R. 577 ; 48 J. P. 484 94, 106, 107
Ludlow (Mayor of) *v.* Charlton (1840), 6 M. & W. 815 108

Mellish, *Ex parte* (1863), 8 L. T. (N.S.) 47... 26
Morgan *v.* Haycock (1880), 44 J. P. 199 112
Morley, *Re* (1875), L. R. 20 Eq. 17 ; 32 L. T. 524 ; 23 W. R. 532 68
Murphy, *In re* ; *Ex parte* London School Board (1877), 2 Q. B. D. 397 ; 46 L. J. M. C. 193 ; 36 L. T. 698 ; 25 W. R. 526 ... 112

National Society *v.* The School Board for London (1874), L. R. 18 Eq. 608 ; 44 L. J. Ch. 229 ; 31 L. T. 22 ; 23 W. R. 2 ... 48
Newman, Reg. *v.* (1852), 2 Den. C. C. 319 88

Parker, Attorney-General *v.* (1747), 3 Atk. 597 36
Penrith Union, *Re* Guardians of, and Overseers of Castle Sowerby. Reg. *v.* Vane (1882), 51 L. J. M. C. 114 ; 47 L. T. 21 ; 47 J. P. 69 78
Plaskett, Cook *v.* (1882), 46 L. T. 383 ; 47 J. P. 296 82
Poplar and Blackwall Free School, *In re* (1878), 8 Ch. D. 543 ; 39 L. T. 88 ; 26 W. R. 827 146

PAGE

Reed, Reg. *v.* (1880), 5 Q. B. D. 483; 49 L. J. Q. B. 600; 42 L. T. 835; 28 W. R. 787; 44 J. P. 633 ... ... 28, 116
Reg. *v.* Birmingham, The Town Council of (1873), (unreported) 119
Reg. *v.* Dudley School Board (1877), (unreported) 19
Reg. *v.* Eaton (1881), 8 Q. B. D. 158; 51 L. J. M. C. 31; 46 L. T. 663; 30 W. R. 335; 46 J. P. 231 ... ... 79, 91, 110
Reg. *v.* Finnis (1859), 28 L. J. M. C. 201; 5 Jur. (N.S.) 971 ... 155
Reg. *v.* German and Others (1891), (unreported) 82
Reg. *v.* Newman (1852), 2 Den. C. C. 390 88
Reg. *v.* Overseers of West Derby (1875), L. R. 10 Q. B. 283; 44 L. J. M. C. 98; 32 L. T. 400 102
Reg. *v.* Reed (1880), 5 Q. B. D. 483; 49 L. J. Q. B. 600; 42 L. T. 835; 28 W. R. 787; 44 J. P. 633 ... ... 28, 116
Reg. *v.* St. Mary Abbott's, Kensington, Assessment Committee of (1891), 1 Q. B. 378; 60 L. J. M. C. 52; 55 J. P. 439, 592 ... 112
Reg, *v.* Sankey (1878), 3 Q. B. D. 379; 47 L. J. Q. B. 96 2, 16
Reg. *v.* Turmine (1878), 4 Q. B. D. 79; 48 L. J. Q. B. 5; 37 L. T. 255; 27 W. R. 150... ... ... 20, 204
Reg. *v.* Vane and Others, *In re* Penrith Union and Castle Sowerby Overseers, (1882), 51 L. J. M. C. 114; 47 L. T. 21; 47 J. P. 69 72
Rex *v.* Hains (1695), Comb. 887 88
Reynolds, Tanfield *v.* (1874), 39 J. P. 239 19
Richardson, Saunders *v.* (1881), 7 Q. B. D. 388; 50 L. J. M. C. 137; 45 L. T. 319; 29 W. R. 800; 45 J. P. 782 81, 94, 95, 96
Richardson *v.* Saunders (1881), 6 Q. B. D. 313; 50 L. J. M. C. 65; 44 L. T. 474; 29 W. R. 631; 45 J. P. 344 94
Rochdale, Mayor, &c., of, School Board of Rochdale *v.* (unreported) 119
Rochdale School Board *v.* Mayor, &c., of Rochdale (unreported) 119
Rolls *v.* School Board for London (1884), 27 Ch. D. 639; 51 L. T. 567; 33 W. R. 129 64

St. Mary Abbott's, Kensington, Assessment Committee of, Reg. *v.* (1891), 1 Q. B. 378; 60 L. J. M. C. 52; 55 J. P. 439, 592 ... 112
Sankey, Reg. *v.* (1878), 3 Q. B. D. 379; 47 L. J. Q. B. 96 2, 16
Sarsons, Woodward *v.* (1875), L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. 867... 21
Saunders *v.* Crawford (1882), 9 Q. B. D. 612; 51 L. J. Q. B. 460; 46 L. T. 420; 46 J. P. 344. 96
Saunders, Richardson *v.* (1881), 6 Q. B. D. 313; 50 L. J. M. C. 65; 44 L. T. 474; 29 W. R. 631; 45 J. P. 344 94

PAGE

Saunders *v.* Richardson (1881), 7 Q. B. D. 388; 50 L. J. M. C. 137; 45 L. T. 319; 29 W. R. 800; 45 J. P. 782 81, 94, 95, 96
Scott *v.* Clifton School Board (1884), 14 Q. B. D. 500 109
Shelly (Overseers of), Shelly School Board *v.* (1873), 22 W. R. 154 117
Shelly School Board *v.* Overseers of Shelly (1873), 22 W. R. 154 117
Skinner *v.* Buckee (1824), 3 B. & C. 6 19
Sunderland (Mayor of), School Board of Sunderland *v.* (unreported) 119
Sunderland (School Board of) *v.* Mayor of Sunderland (unreported) 119
Swansea (Mayor of), School Board of Swansea *v.* (unreported) ... 119
Swansea (School Board of) v. Mayor, &c., of Swansea (unreported) 119
Sylvester, Bradley *v.* (1871), 25 L. T. 459 27

Tanfield v. Reynolds (1874), 39 J. P. 239 19
Tetford (Overseers of), School Board of Tetford *v.* (unreported).. 117
Tetford (School Board of) *v.* Overseers of Tetford (unreported)... 117
Toogood, Winyard *v.* (1882), 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 229; 31 W. R. 271; 47 J. P. 325 96
Tudhoe, *Re*, 1 P. L. Stat. xxxv 27
Turmine, Reg. *v.* (1878), 4 Q. B. D. 79; 48 L. J. Q. B. 5; 37 L. T. 255; 27 W. R. 150 20

Vane and Others, Reg. *v.*; *In re* Penrith Union & Castle Sowerby (Overseers) (1882), 51 L. J. M. C. 114; 47 L. T. 21; 47 J. P. 69 72

West Bromwich Board School, *In re* (1880), 5 C. P. D. 191; 49 L. J. C. P. 641; 28 W. R. 766; 44 J. P. 426... 23
West Bromwich School Board *v.* Overseers of West Bromwich (1884), 13 Q. B. D. 929; 53 L. J. M. C. 67, 153; 32 W. R. 866; 48 J. P. 549, 808 70
Winyard *v.* Toogood (1882), 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 229; 31 W. R. 271; 47 J. P. 325 96
Wood, London School Board *v.* (1885), 15 Q. B. D. 415; 54 L. J. M. C. 145; 54 L. T. 88; 50 J. P. 54 95
Woodward *v.* Sarsons (1875), L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. 867 21
Wright, London School Board *v.* (1884), 12 Q. B. D. 578; 53 L. J. Q. B. 266; 50 L. T. 606; 32 W. R. 577; 48 J. P. 484 ... ... 94, 106, 107

A TREATISE

ON THE

ELEMENTARY EDUCATION ACTS, 1870—1891.

PART I.

THE EDUCATION DEPARTMENT.

THE term "Education Department" means "the Lords of the Committee for the time being of the Privy Council appointed for Education."(*a*) The Department was first founded in 1839, and in 1856 was re-constituted by an Order in Council(*b*) to include the Educational Establishment of the Privy Council Office, and the Establishment for the Encouragement of Science and Art, previously under the direction of the Board of Trade, but now called the Department of Science and Art. The Department has the control of the whole public elementary education system of the country and of the system of technical education connected with the Science and Art Department. The head of the Department is the Lord President of the Council, assisted by a member of the Privy Council, who is called the Vice-president of the Committee of the Privy Council on Education.(*c*) He acts under the direction of the Lord President and for him in his absence.(*b*) He is paid a salary not exceeding 2,000*l.* per annum, and is capable of being elected and of sitting and voting as a member of the House of Commons.(*c*)

The Education Department has also power, under the several Elementary Education Acts, to issue orders,

(*a*) 52 & 53 Vict. c. 63, s. 12 (6); 33 & 34 Vict. c. 75, s. 3.
(*b*) Dated 25th February, 1856; 19 & 20 Vict. c. 116.
(*c*) 19 & 20 Vict. c. 116.

requisitions, and regulations with reference to the various matters that come before the Department.(*a*) After the expiration of three months from the date of such order or requisition, such order or requisition shall be presumed to have been duly made, and no objection to its legal validity can be entertained.(*b*) This provision must, however, be taken only to apply to cases where the order is regular, or is only irregular to a qualified extent; it does not legalise any order which is *ultra vires*, or which creates any new provision not contemplated by the Legislature.(*c*) The Department is further empowered to issue minutes regulating the conditions of the annual parliamentary grant, which, after they have lain for one month on the table of both Houses of Parliament, have the force of law.(*d*)

The Act of 1870 gave an authority to the minutes of the Education Department which they had not possessed before. Previously they had been simply regulations for the distribution of the education grant assented to by Parliament from year to year. Now such minutes, after having been laid on the table of both Houses of Parliament, acquire for the time being statutory validity until they are superseded by succeeding minutes.(*d*)

The orders, minutes, certificates, notices, requisitions, and documents of the Education Department, if purporting to be signed by some secretary or assistant secretary of the Department, shall be deemed to have been so signed and to have been made by the Department, and it may be proved by the production of a copy purporting to have been so signed.(*f*) The provisions of the Documentary Evidence Act, 1868, apply to such documents,(*g*) that is to say, such documents may be made use of in all

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(*a*) These will be pointed out from time to time as they arise in the following pages. In particular the Elementary Education (Orders) Act, 1874 (see Appendix), was passed to remove doubts respecting the validity of Orders of the Department with respect to united school districts.

(*b*) 33 & 34 Vict. c. 75, s. 84; 39 & 40 Vict. c. 79, s. 45.

(*c*) *Reg.* v. *Sankey* (1878), 3 Q. B. D. 379.

(*d*) 33 & 34 Vict. c. 75, s. 97.

(*f*) 33 & 34 Vict. c. 75, s. 83; 39 & 40 Vict. c. 79, s. 45.

(*g*) *Ibid.*

legal proceedings by producing the *London Gazette* containing a copy thereof, or by producing a copy of the documents purporting to be printed by the Government printer, or a certified copy or extract of the same by the clerk of the Council, or by some one of the Lords of the Council. No proof is to be required of the handwriting or official position of any person certifying to the truth of any copy or extract.

The Education Department shall in every year cause to be laid before both Houses of Parliament a report of their proceedings during the preceding year.(*h*)

(*h*) 33 & 34 Vict. c. 75, s. 100.

PART II.

ADMINISTRATIVE.

CHAPTER I.

SUPPLY OF SCHOOLS.

As a first step towards providing efficient schools, the Act of 1870 mapped out the country into school districts, each separately chargeable with the duty of providing elementary education within its own borders, which were to be boroughs and parishes, or groups of parishes, the metropolis being constituted a district by itself.(*a*)

The most important provision of the Act of 1870 is to be found in its 5th section, which enacts that "There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district, for whose elementary education efficient and suitable provision is not otherwise made." The clause, indeed, bristles with terms, which, as they have given rise to much controversy, require to be accurately defined. If we ask what is "elementary education," we look in vain for the meaning or limits of the phrase in the Elementary Education Acts, nor are we assisted by judicial or authoritative interpretation. The meaning and limits of

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(*a*) 33 & 34 Vict. c. 75, s. 4. The school districts are—

1. The Metropolis (*ibid.*, s. 37, and Sched. 1).
2. Every borough (*ibid*, s. 29), excepting Wenlock, which is to be deemed a parish (37 & 38 Vict. c. 39), and Oxford.
3. The district of the local board of Oxford (33 & 34 Vict. c. 75, s. 93).
4. The part of a parish divided by a borough outside the borough boundary (33 & 34 Vict. c. 75, s. 77; 39 & 40 Vict. c. 79, s. 49), or a detached part of a parish (36 & 37 Vict. c. 86, s. 12).
5. Parishes not included in any of the above-mentioned districts (33 & 34 Vict. c. 75, Sched. 1), including the borough of Wenlock (37 & 38 Vict. c. 39).

the phrase depend, indeed, only on the discretion of the Committee of Council, of successive Ministers, and upon the various Codes published by them. No limit is imposed upon the power of framing such Codes, and until such is done the limits of elementary education cannot be defined.(*b*) If, again, we ask what is an "elementary school," the following is the definition supplied by the Act itself:—"The term 'elementary school' means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence per week."(*c*)

But a "public elementary school," as defined by the Act, has a still more technical meaning. A public elementary school is thus described by the celebrated conscience clause:—(*d*) "It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend, or abstain from attending, any Sunday School or any place of religious worship, or that he shall attend any religious observance, or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may withdraw by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs."(*e*) It is required also that a time-table should be put up in the school, setting forth the time devoted to the religious observances or instruc-

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(*b*) The following are the subjects of *elementary* instruction which the Royal Commission on the Elementary Education Acts regarded generally as essential:—Reading, writing, arithmetic; needlework for girls; lineal drawing for boys; singing, English, so as to give the children an adequate knowledge of their mother tongue; English history, taught by means of reading books; geography, especially of the British Empire; lessons on common objects in the lower standards, leading up to a knowledge of elementary science in the higher standards. See their Final Report (1888), p. 146.

(*c*) 33 & 34 Vict. c. 75, s. 3. A workhouse school is not an elementary school within this definition.

(*d*) *Ibid.*, s. 7. (*e*) *Ibid.*, s. 7 (1).

tion, which time-table must be approved by the Department through the inspectors.(*a*) The school must be open at all times for the inspection of Her Majesty's inspector; and "it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book."(*b*) "The school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school, in order to obtain an annual parliamentary grant."(*c*) In such "public elementary schools" the Act requires that accommodation shall be provided for all those children "for whose elementary education *efficient* and *suitable* provision is not otherwise made."(*d*) By *efficient* schools is meant "those that have good buildings and good teaching," and by *suitable* schools, "such as parents cannot reasonably object to on religious grounds."(*e*)

The following extract, taken from the Instructions to Her Majesty's Inspectors of Schools,(*f*) relative to the inquiries into the school supply of their respective districts, serves to show the interpretation put upon the word "suitable," as applied to school accommodation, by the Minister responsible for the administration of the Act, when first put into force:(*g*)—

"'Efficient and suitable provision will be held to be made for a district when there is efficient elementary school accommodation (1) within a reasonable distance of the house of every child who requires elementary instruction; (2) of which he can avail himself on payment of a fee within the means of his parent; (3) without being required to attend any religious instruction to which his parent objects.'

(*a*) 33 & 34 Vict. c. 75, s. 7 (2).
(*b*) *Ibid.*, s. 7 (3).
(*c*) *Ibid.*, s. 7 (4).
(*d*) *Ibid.*, s. 5.
(*e*) *Cf.* Mr. Forster's speech in introducing the bill: *Hansard's Parliamentary Debates*, Feb. 17, 1870.
(*f*) Issued in May, 1871.
(*g*) Mr. W. E. Forster.

"There appears to be some misapprehension with respect to the last clause in this sentence. It does not imply that *every school* in a district must admit all comers under the protection of a conscience clause.(*h*) That will be required only in the case of the schools which seek annual aid. Nor does it imply that there must be such a school in every district. But *in every district* the minority, whether Churchmen or Dissenters, must be able, if they wish it, to obtain secular instruction for their children with such protection, either in the district itself or in an adjoining district.

"Under the Act, a district may have henceforth two classes of efficient schools:—(*a*) Public elementary schools in receipt of annual aid, and worked under a time-table conscience clause by certificated teachers; (*b*) Efficient schools (within the meaning of the Act) not receiving annual aid, either as being without certificated teachers, or as refusing to accept the prescribed conscience clause.

"The school provision of a district will be suitable if there be some school or other under a conscience clause within reach of every child whose parent wishes him to have this protection. A parent cannot present his child to the teacher of any particular school, and demand his admission to the secular instruction alone given in the school, unless the school is in receipt of annual aid, or held under a trust deed which secures the rights of conscience. The individual school may be recognised as effcient without a conscience clause. But every district must contain an efficient school with a conscience clause if there is none near enough in other districts, which the children of any minority who require such protection can attend; and this school (or these schools if one is not large enough) must provide efficient accommodation for all the children of the minority."

To the question, for what proportion of the population of a district ought school accommodation to be provided, no answer can be given which will be universally applicable. Local circumstances vary so widely that what would be an ample supply of schools for one district would be insufficient for another of similar population.

(*h*) As to "conscience clause," see p. 5.

A parish may be wholly, mainly, or only very partially occupied by the classes requiring public school accommodation for their children. The requirements of Bethnal Green cannot be measured in this respect by the same standard as those of Hastings or Leamington. Accordingly, in the official returns sent to the local authorities, they are asked to state what proportion of the population in their respective districts they estimate to be "of the class whose children will attend public elementary schools."

The requirements of each district must be judged by the answer to this inquiry, but in ordinary cases, *i.e.*, where the labouring classes are about six-sevenths of the population, it may be assumed that accommodation in elementary schools will be required for one-sixth of the *entire population.* This has been the rule hitherto followed by the Education Department in making building grants, and it is probably sufficient for all practical purposes.(*a*) But when the families who are able to make independent provision for the education of their children either exceed or fall short of the usual proportion (one-seventh) to the whole of the community, it may be calculated that accommodation will be required in elementary schools for about one-fifth of the rest of the population.

To anticipate what is said on a subsequent page, the school boards appear to be the primary judges of the accommodation to be provided. The 18th section of the Act of 1870(*b*) gives absolute discretion to school boards to supply such additional accommodation as, in their opinion, is necessary in their district. In London the initiative is always taken by the school board. There, however, a provisional order being always required to obtain a site, the proposal to build is necessarily brought before the Education Department, and, on their behalf, a special local inquiry into the question is held by Her Majesty's inspector. If, as is customary in London and elsewhere, the building is to be erected by means of a

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(*a*) *Final Report of Commissioners on Elementary Education Acts* (1888), 53.

(*b*) 33 & 34 Vict. c. 75.

loan, the Department can refuse their consent to its issue; and, indeed, under the Act of 1873(*c*) they are bound to do so if the proposed school is in excess of the requirements of the district. Again, the Department may refuse an annual grant to a board school, not provided by means of a loan, if they deem it unnecessary.(*d*) In this way the ultimate responsibility of ascertaining the sufficiency or deficiency of accommodation in any given district rests with the Education Department, and in all cases they can exercise very practical control over the provision of additional school accommodation proposed to be made by school boards.

In districts where there is no school board, and in which, therefore, no authority exists charged with the duty of providing school accommodation, the school attendance committee may make representations to the Department respecting the school supply within their district. If the Department are satisfied that there is a deficiency the parish or district will be called upon to supply it by voluntary effort, or failing that, to elect a school board for the purpose.

The question of whether a school board has a prior right to supply a deficiency of accommodation in its district has been keenly debated. As a consequence of the assertion of such a right (founded upon the 18th section of the Act of 1870 already referred to) offers on the part of voluntary bodies to supply an existing deficiency have been in many cases refused by the Department, with the result that, if the schools had been built, they would have been excluded from the annual grant. Some schools so built have, however, since been recognised. It is admitted that the school board is bound to reckon as part of the available supply from time to time all voluntary efficient schools then existing. But the interpretation of the Act, on which the Education Department have always proceeded, is, that as the school board are bound by the 10th section of the Act of 1870 to supply the original deficiency, so under the 18th section they are afterwards entitled, if they insist on

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(*c*) Section 10.
(*d*) 33 & 34 Vict. c. 75, s. 98.

doing so, to supply whatever deficiency may from time to time arise. The Department do not, in estimating a deficiency subsequently arising, recognise as part of the school supply, schools which are only in contemplation, nor even those which are in the course of erection, unless the boards acquiesce in divesting themselves of their right to supply the deficient accommodation.(*a*) Only with the consent of the Department can these be reckoned as public elementary schools, and such consent can, under the terms of the 98th section of the Act of 1870, be given only to the managers of a school already in existence.

With school districts in which the efficiency and suitability of public school accommodation are supplied by schools already existing, the Act of 1870 does not interfere. Wherever this is not the case, a new machinery is provided by the Act for supplying the deficiency, viz., the school board.(*b*)

CHAPTER II.

THE SCHOOL BOARD.

THE Act of 1870 provides for the establishment of a school board in every school district which requires further suitable accommodation.(*c*) The board so established is a corporate body, having a perpetual succession and a common seal, with power to acquire and hold land for the purposes of the Act.(*d*) The number of members is to be not less than five nor more than fifteen, as may be determined in the first instance by the Education Department.(*e*) It rests with the Education Department to determine whether a deficiency exists in any school district in the public school accommoda-

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(*a*) Cf. *Final Report of Commissioners on Elementary Education Acts* (1888), 55.
(*b*) 33 & 34 Vict. c. 75, s. 6.
(*c*) *Ibid.*, ss. 6, 8—12.
(*d*) *Ibid.*, s. 30.
(*e*) *Ibid.*, s. 31 (1).

tion.(*f*) The Department arrive at such determination by causing returns to be made to them(*g*) and should they determine that a school is necessary they publish their decision on the wants of the district—setting forth a description of the district, the number, size, and description of the schools (if any) available for the district, and the amount and description of the public school accommodation (if any) which appears to them to be required, and any other particulars which they think expedient.(*h*) The right of appeal within a month is given to a certain number of ratepayers of the district—not less than ten, or if less than ten being rated to the poor rate upon a rateable value of not less than one-third of the whole rateable value of the district—and also to the managers of any elementary school in the district.(*h*) The appellants are to apply in writing to the Education Department, and, if necessary, a public inquiry will be held.

The appellants may be those who feel aggrieved by the decision of the Department that there is adequate public school accommodation available for a school district, or those who feel aggrieved by the decision that further accommodation is required. The Department are empowered when they deem it just to direct that the expenses of an inquiry shall be borne by the persons on whose application it was granted, and they may decline to hold the inquiry if the appellants refuse to give security for payment of the expenses.(*i*)

Then a final notice is issued.(*k*) In this final notice the same particulars that appeared in the previous notice are set out, with such modifications (if any) as the Department think fit to make, and a direction that the public school accommodation therein mentioned as required be supplied.(*k*) The Act does not indicate who is to supply the public school accommodation on the direction of the Education Department. It seems that the Department

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(*f*) 33 & 34 Vict. c. 75, s. 8; see also pp. 51, *et seq.*, *post.*
(*g*) *Ibid.* ss. 8, 13; 36 & 37 Vict. c. 86, s. 19.
(*h*) 33 & 34 Vict. c. 75, s. 9.
(*i*) *Ibid.*, s. 73.
(*k*) *Ibid.*, s. 9.

are to give a direction that it be supplied, and if the direction be not complied with, that a school board is to be formed.

After waiting not more than six months to see if the deficiency is in course of being supplied, a school board is to be provided for the district by the Education Department.(*a*) To this board a requisition will be sent by the Department to take proceedings forthwith for supplying the public school accommodation mentioned in the requisition, and the board shall supply the same accordingly.(*a*) If the board should fail to comply with the requisition within twelve months, it will be deemed to be in default.(*b*)

A school board may, however, be created in a school district(*c*) or united school district(*d*) by the Education Department, without the existence of any school deficiency, on the application of those who would have to elect one, or where the Department are satisfied that a deficiency in school accommodation is imminent.(*e*) In such a case the Department may without or after making inquiry, public or other, or publishing notices, cause a school board to be formed for the district, and send a requisition to such board in the same manner as if they had published a final notice.(*e*) An application for this purpose may be made in the case of a borough by a resolution passed at a meeting of the council of the borough summoned in the ordinary way by a majority of the members present and voting on the question;(*f*) and in the case of a united school district, by a resolution in favour of the union passed in each district separately, and if a school board has been elected in any such district, by the school board.(*g*) In the case of a school district consisting of a parish or part of

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(*a*) 33 & 34 Vict. c. 75, s. 10.

(*b*) *Ibid.*, s. 11. Defaulting school boards are treated of, *post*, pp. 39 *et seq.*

(*c*) *Ibid.*, s. 12.

(*d*) 36 & 37 Vict. c. 86, s. 11.

(*e*) 33 & 34 Vict. c. 75, s. 12 ; 36 & 37 Vict. c. 86, s. 11.

(*f*) 33 & 34 Vict. c. 75, Sched. 2, part 2, r. 1. A series of general regulations for the first election of school boards in boroughs has been issued by the Education Department.

(*g*) 36 & 37 Vict. c. 86, s. 11,

a parish,(*h*) not situate within a municipal borough or within the metropolis the resolution is to be passed at a meeting of the ratepayers "in like manner as near as may be as that in which a member of the school board is elected with such necessary modifications as may be contained in any order"(*i*) of the Education Department. Upon a requisition in writing signed by fifty ratepayers,(*k*) or by one-third of the persons who are ratepayers of the parish and so entitled to vote, to the clerk of the union of which the parish forms part, or the person for the time being discharging the duties of such clerk, the clerk (and so-called the "summoning officer") shall convene a meeting of the ratepayers within fourteen days after receiving the requisition for the purpose of considering the subject of adopting a school board. The summoning officer, seven clear days at least before the day of meeting, must publish a notice in the way that notices are usually published in the parish, stating that a requisition has been received requiring him to call a meeting for the purpose, and that a meeting will be held at a convenient time and place (mentioned in the notice) for the purpose of considering a resolution on the subject. Every ratepayer qualified to vote in the election of members of a school board for the parish shall be entitled to be present and vote at such meeting, and shall have only one vote. The resolution must be moved and seconded. If the resolution is withdrawn or negatived or if it is carried, and no demand is made for a poll, the chairman must publish a notice to that effect. The resolution may be withdrawn by the two ratepayers who proposed and seconded the same; and in such a case no further proceedings shall be taken in respect of the poll. If the resolution is carried a poll may be demanded by any ten of the ratepayers. The demand must be made in writing, delivered to the chairman. A poll shall then be taken, unless the major part of the ratepayers so signing the writing withdraw the same by notice in

(*h*) 33 & 34 Vict. c. 75, s. 77; 36 & 37 Vict. c. 86, s. 12.

(*i*) 33 & 34 Vict. c. 75, Sched. 2, part 2, r. 2.

(*k*) The term "ratepayer" includes every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated. *Ibid.*, s. 3. It thus includes women who are "duly rated," as well as men.

writing to the chairman at the meeting, or to the summoning officer after the meeting who shall publish notice thereof. If a poll be taken the summoning officer must fix the day of taking the poll, which must be not less than *ten* clear days after the day fixed for the meeting. He must also publish a notice to that effect. He is to act as returning officer and to provide everything which in the case of a municipal election is required to be provided by the mayor for the purpose of a poll. The voting is by ballot.(*a*) If the resolution is rejected, the resolution cannot be again proposed until the lapse of twelve months from the date of the rejection.(*b*) The passing of the resolution cannot be questioned except within six months from the date of its being passed.(*c*) Finally, in the case of a united school district, the resolution is passed in each district separately, and, if a school board has been elected in any such district, by the school board.(*d*)

The Education Department will not act upon an application of the ratepayers for the formation of a board without first taking into consideration the circumstances of the district, for the purpose of determining whether it may not be expedient to unite the parish with one or more adjacent parishes, so as to form a united school district.

Provision is made for forming united districts, and for dissolving the same; the united school board being composed of members elected by the ratepayers of the constituent parts of the united district.(*e*) The Education Department may, by Order, after due inquiry and notice, form a united school district by uniting any two or more adjoining school districts,(*f*) and upon such union cause a school board to be formed for such united school dis-

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(*a*) A series of general regulations as to passing resolutions "for application for school boards" and the first election of school boards in parishes has been issued by the Education Department.

(*b*) 33 & 34 Vict. c. 75, Sched. 2, part 2, r. 3. This, however, does not prevent the Education Department forming a school board within the twelve months, under section 10 of the Act of 1870.

(*c*) 36 & 37 Vict. c. 86, s. 9.

(*d*) *Ibid.*, s. 11.

(*e*) 33 & 34 Vict. c. 75, ss. 40, 42.

(*f*) School district is defined, *ante*, p. 4.

trict.(*g*) For the purposes of the Acts a united school district is a school district, the school board for the united district is a school board for a district, and the local rate and rating authority for the united district is in each of the constituent districts the same as if such constituent district did not form part of the united district.(*h*)

The conditions of forming a united school district are:—

(1.) Inquiry by the Education Department as to the expediency of uniting two or more districts.

(2.) Notice of the intention of the Department to unite.

(3.) Appeal by persons aggrieved, as in the case of a notice relating to the public school accommodation of any district,(*i*) with this qualification that it shall not be necessary to cause a public inquiry to be held with respect to the union of districts until after the expiration of the period allowed by the final notice for the supply of the school accommodation.(*k*)

(4.) The Department to consider whether any public school accommodation is required for the area proposed as the united district, instead of for each of the districts constituting such area, and their decision as to the public school accommodation to refer to such area and not separately to each of the constituent districts.(*k*)

Where any part of a proposed united school district includes any district or part of a district already acting, or where a united school district is dissolved, the Department may then by Order dissolve the then existing school board, or make all necessary changes in the constitution of such existing school board.(*l*) They have it in their absolute discretion to make by order proper arrangements respecting the schools, property, rights and liabilities of such board, and all arrangements which may be necessary.(*l*) It is to be observed that when real property has been acquired by the school board, some difficulty may arise in regard thereto if a united district be dissolved.

(*g*) 33 & 34 Vict. c. 75, s. 40.

(*h*) *Ibid.* The object of forming united school districts is to secure the equalisation of the rate, economy, and general convenience.

(*i*) 33 & 34 Vict. c. 75, s. 41; *Ibid.*, ss. 8, 9, 73. See also *ante*, p. 12.

(*k*) *Ibid.*, s. 41. (*l*) *Ibid.*, s. 47.

It should be added that if the Department propose to form or dissolve a united district, they are to publish notice of the proposed order not less than three months before the order is made; the like persons who may appeal against the determination of the Department as to public school accommodation,(*a*) if they feel aggrieved by the determination of the Department, may apply for a public inquiry, and the Department shall thereupon hold a public inquiry, and consider the report made thereon before they make the order for the formation of the district.(*b*) Where a district has been dissolved the Department may deal with the constituent districts in the same manner as if they had never been united, and may cause school boards to be elected therein.(*c*)

The Order forming or dissolving the united district is evidence of the formation of the district.(*d*) After the expiration of three months from the date of the Order the district is presumed to be formed or dissolved, and after that no objection to the formation or dissolution can be entertained in any legal proceedings.(*e*) The provisions respecting the constitution of the school board apply to the constitution of the board in the united school district.(*f*) The Education Department prescribe the name of the district.(*f*)

A parish judged by the Education Department too small to act as a separate parish in a united school district may be added to another parish, to the school board of which it is entitled to send representatives.(*g*) In such a case the ratepayers of the smaller parish must attend the vestry of the larger parish. They will not meet for the purposes of the Act in their own vestry.

(*a*) See *ante*, p. 11.

(*b*) 33 & 34 Vict. c. 75, s. 43.

(*c*) *Ibid.*, s. 42.

(*d*) *Ibid.*, s. 44. The writ of *certiorari* is not taken away by this provision, and therefore within the three months the order fixing or dissolving the united district may be removed into the High Court for the purpose of being quashed.

(*e*) *Ibid.* Such order must in no respect be *ultra vires: Reg.* v. *Sankey* (1878), 3 Q. B. D. 379.

(*f*) 33 & 34 Vict. c. 75, s. 45.

(*g*) *Ibid.*, s. 48.

School boards are also empowered in certain cases to combine for any purpose relating to elementary schools in their district;(*h*) in particular they may combine for the purpose of providing, maintaining, and keeping efficient schools common to their districts.(*h*) For such combination they require the sanction of the Education Department. The agreement for such combination may provide for the appointment of a joint body of managers(*i*), for the proportion of the contributions to be paid by each school district, and for any other matters which in the opinion of the Department are necessary for carrying out the agreement.(*k*) The expenses of such joint body of managers shall be paid in the proportion specified in the agreement by each of the school boards out of their school fund.(*k*) Where the boards have combined for all purposes, they may keep one set of accounts in common.(*l*)

Again it may happen that a school in one school district may be available, and afford sufficient public school accommodation for a neighbouring district, and thus render it unnecessary to provide separate accommodation for that district. Accordingly a provision has been introduced for contributory districts(*m*) in order that one school district may contribute towards the provision of elementary schools in another school district. The procedure as to publication of notices, and application for, and holding of a public inquiry in the case of an order for a united district is to apply *mutatis mutandis* to an order respecting a contributory district.(*n*) The Order forming the contributory district is evidenced in the same way, and receives its legal validity if not questioned within three months of its date.(*n*) The Order may be revoked or altered by the Education Department.(*n*)

These then are the four ways in which districts may be formed for the purposes of a school board.

(*h*) *Ibid.*, s. 52.

(*i*) As in the case of appointment of managers of schools by school boards; *Ibid.*, s. 15, *post*, p. 57.

(*k*) 33 & 34 Vict. c. 75, s. 52.

(*l*) *Order of Local Government Board as to School Board Accounts*, Arts. 16, 17.

(*m*) *Ibid.*, s. 49. (*n*) *Ibid.*, s. 51. See *ante*, p. 15.

It should be added that if the Department propose to form or dissolve a united district, they are to publish notice of the proposed order not less than three months before the order is made; the like persons who may appeal against the determination of the Department as to public school accommodation,(*a*) if they feel aggrieved by the determination of the Department, may apply for a public inquiry, and the Department shall thereupon hold a public inquiry, and consider the report made thereon before they make the order for the formation of the district.(*b*) Where a district has been dissolved the Department may deal with the constituent districts in the same manner as if they had never been united, and may cause school boards to be elected therein.(*c*)

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(*a*) See *ante*, p. 11.

(*b*) 33 & 34 Vict. c. 75, s. 43.

(*c*) *Ibid.*, s. 42.

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(*g*) *Ibid.*, s. 48.

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Again it may happen that a school in one school district may be available, and afford sufficient public school accommodation for a neighbouring district, and thus render it unnecessary to provide separate accommodation for that district. Accordingly a provision has been introduced for contributory districts(*m*) in order that one school district may contribute towards the provision of elementary schools in another school district. The procedure as to publication of notices, and application for, and holding of a public inquiry in the case of an order for a united district is to apply *mutatis mutandis* to an order respecting a contributory district.(*n*) The Order forming the contributory district is evidenced in the same way, and receives its legal validity if not questioned within three months of its date.(*n*) The Order may be revoked or altered by the Education Department.(*n*)

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(*k*) 33 & 34 Vict. c. 75, s. 52.

(*l*) *Order of Local Government Board as to School Board Accounts*, Arts. 16, 17.

(*m*) *Ibid.*, s. 49. (*n*) *Ibid.*, s. 51. See *ante*, p. 15.

School boards are elected for a period of three years, under the method known as cumulative voting; in a borough by the persons whose names are on the burgess roll for the time being in force, and in a parish not situate in the metropolis by the ratepayers.(*a*) All electors are disqualified from voting who have been found guilty of corrupt practices at a school board, municipal or parliamentary election.(*b*)

The number of members, as already pointed out, is to be not less than five, or more than fifteen, as may be determined in the first instance by the Education Department.(*c*) In a united school district the number of members will be specified in the Order forming the district,(*d*) which, like any other school board, may be altered from time to time by a resolution of the school board, approved by the Education Department.(*e*) Further, in such district the electors of each constituent part will be entitled to vote for all or any of the candidates proposed for election for the united district.(*f*) In the case of a small parish added to another parish, the electors will vote along with the electors of that other parish.(*g*) Finally, in the case of a contributory district there may be a separate school board for the contributing district,(*h*) and elected accordingly.

No qualification is prescribed by the Act for a candidate for election as a member of a school board. Females, as well as males, whether householders or not, and non-residents as well as residents, are eligible. The Orders of the Education Department require that the candidate shall be of "full age."

The following persons are disqualified:—

(1.) Any member or manager who holds or accepts any place of profit, the appointment to which is vested in the school board, or in any managers appointed by them, or any person sharing or concerned in the profits of any

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(*a*) 33 & 34 Vict. c. 75, s. 29.
(*b*) *Ibid.*, s. 91; 47 & 48 Vict. c. 70, ss. 22, 36; 46 & 47 Vict. c. 51, s. 36.
(*c*) 33 & 34 Vict. c. 75, s. 31 (1).
(*d*) *Ibid.*, s. 46; see also s. 31 (1).
(*e*) *Ibid.*, ss. 31, 46. (*f*) *Ibid.*, s. 46.
(*g*) *Ibid.*, s. 48. (*h*) *Ibid.*, s. 50.

bargain or contract with or work done under the authority of the board or its managers. To this, there are three important exceptions :—Where it is a case of a sale of land or loan of money to the board; where the contract is with a company, in which the member holds shares; where it relates to advertising by the board in a newspaper in which the member has a share or interest; if, in each of these cases respectively, he does not vote with respect to such sale, loan, contract, or advertising.(*i*)

The penalty on any one committing any of these offences is, on conviction summarily, a fine not exceeding 50*l.*, and the place of profit and his office of member to become vacant.(*k*) A member of a school board who enters into a contract for printing in connection with the election, even though at the time a candidate for re-election, is liable to be convicted.(*l*) If the member supplies the goods or executes the contract, without profit to himself, he is not liable.(*m*)

(2.) A member found guilty of corrupt or illegal practices at a parliamentary, municipal or school board election.(*n*)

(3.) A debtor adjudged bankrupt is disqualified for being elected, or holding the office of member, unless the adjudication of bankruptcy against him is annulled, or he obtains from the court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. If he is adjudged bankrupt while a member his seat becomes vacant.(*o*)

(*i*) 33 & 34 Vict. c. 75, s. 34.

(*k*) *Ibid.*, s. 34. This penal provision will be enforced summarily under Jervis's Act (11 & 12 Vict. c. 43); see section 92 of the 33 & 34 Vict. c. 75.

(*l*) *Tanfield* v. *Reynolds* (1874), 39 J. P. 239.

(*m*) *Skinner* v. *Buckee* (1824), 3 B. & C. 6.

(*n*) 46 & 47 Vict. c. 51, ss. 6 (3), 10, 11, 22, 23, 64 ; 47 & 48 Vict. c. 70, ss. 3, 36 ; 33 & 34 Vict. c. 75, s. 91. Section 8 of the 36 & 37 Vict. c. 86, obviates the difficulty, which arose in the case of *Reg.* v. *Dudley School Board* (1877) (unreported), as to whether a person convicted of corrupt practices at an election of a member of a school board, and thereby disqualified, under section 91 of the Act of 1870, from voting at a school board, municipal, or parliamentary election for six years, could be returned as a member of the school board.

(*o*) 46 & 47 Vict. c. 52, s. 32.

(4.) "If a member absents himself during six successive months from all meetings of the board, except from *temporary* illness or other cause to be approved by the board, or is punished with imprisonment for any crime," such person shall cease to be a member, and his seat shall become vacant.(*a*) A person who so becomes disqualified is not qualified to fill the casual vacancy so caused; but he is re-eligible at the triennial election. In *Reg.* v. *Turmine*,(*b*) a member who had absented himself from board meetings for six months for a cause not approved by the board, and thereby ceased to be a member, was legally re-elected at the next triennial election. The Education Department have advised with reference to the absence of members from board meetings that the office of member is not determined when the cause of absence is approved by the board, although the approval is not given until after the absence from all meetings of the board for six successive months. When the absence has been on account of temporary illness, no approval of the board is required, and it does not seem to follow that permanent illness will vacate the seat. The word "crime" includes a felony or misdemeanour, but imprisonment for not obeying an order of justices will not be imprisonment for a "crime." A member of an English school board was convicted and suffered imprisonment for an offence of conspiracy in Ireland; but was not tried by indictment (the only mode of trial for that offence in England) but on a charge before a court of summary jurisdiction—a mode of proceeding which could not be followed in England. It was held that inasmuch as the offence of conspiracy is a crime in England as in Ireland the member had been "punished with imprisonment for a crime,"(*c*) and had accordingly vacated his seat.

Where there are more candidates nominated than there are members required, the voting shall take place by ballot,(*d*) under the Ballot Act, 1872. The body of

(*a*) 33 & 34 Vict. c. 75, Sched. 2, Part 1, r. 14.

(*b*) (1878) 4 Q. B. D. 79; 48 L. J. Q. B. D. 5; 39 L. T. 255; 43 J. P. 6.

(*c*) *Conybeare* v. *London School Board* (1890), 1 Q. B. 118.

(*d*) 36 & 37 Vict. c. 86, Sched. 2, r. 1 (*b*). For full particulars of the mode of conducting a school board election see the rules in Sched. 2, of 33 & 34 Vict. c. 75, and Sched. 2, of 36 & 37 Vict. c. 86, and *The School Board Election Manual*, by Mr. Gibbs and Mr. Down.

the Ballot Act, it will be remembered, is imperative while the schedules are only directory,(*e*) unlike the schedules of the Elementary Education Acts. The elections are triennial.(*f*) The day for the triennial retirement of members is fixed by the Education Department.(*g*) Casual vacancies are filled up by the board.(*h*) If the number of members is reduced to less than the number required for a quorum, the Education Department may proceed as if the board were in default,(*i*) or may direct an election.(*k*)

The expenses of the election and of taking the poll in any district, other than the metropolis, shall be paid by the school board out of the school fund.(*l*) The following rules have been issued by the Department determining the charges for conducting school board elections :—

(1.) In publishing the various notices required to be published by the Order regulating the election, you will refrain henceforth from publishing these notices in any *newspaper*, and you will perceive that the order for publication in a newspaper is *not* required, and the expenses of so doing will henceforth be disallowed.

(2.) In making out a bill of charges, the returning officer must set forth—first, the sum total charged for personal trouble, which may be regarded as his fee; and, secondly, the various items charged in respect of sums actually disbursed or to be disbursed by him. It will be observed that the charge fixed is a maximum. It must, therefore, depend upon circumstances whether this maximum should be charged in each case.

As to the first.—If the election is uncontested, the fee or sum charged for personal trouble must not exceed 5*l.* 5*s.* If the election be contested, and there is only one polling station, the fee must not exceed 10*l.* 10*s.*, and if there is more than one polling station, the maximum sum to be charged should not exceed 5*l.* 5*s.* for each polling station after the first.

(*e*) *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733; 32 L. T. 867.
(*f*) 39 & 40 Vict. c. 79, Sched 3.
(*g*) 33 & 34 Vict. c. 72, Sched. 2, rr. 9, 391.
(*h*) 39 & 40 Vict. c. 79, Sched. 3.
(*i*) As to board being in default, see *post*, p. 39.
(*k*) 33 & 34 Vict. c. 75, Sched. 2, r. 16.
(*l*) 33 & 34 Vict. c. 75, Sched. 2.

As to the second.—The number of polling stations must not exceed in boroughs one for each ward, and in parishes must not exceed one for every 1,000 persons entitled to vote, as shown by the rate book. But, in either case, the number may be increased by special application to the Education Department.

There must not be more than one presiding officer at a polling station, and the returning officer is expected to act as one of them. In some cases it is the practice that the same person should act as presiding officer at several polling stations in the same room. When the poll is open from 8 A.M. till 8 P.M., the fee of the presiding officer must not exceed 3*l.* 3*s.*, and he may have one clerk at 1*l.* 10*s.*, and a second at 1*l.* When the poll is open from noon till 8 P.M., the fee of the presiding officer must not exceed 2*l.* 2*s.*, and he may have two clerks, one at 1*l.*, and another at 15*s.* One of the clerks may also be appointed as a deputy to act for the presiding officer in case of emergency. No money for refreshments must be paid to the returning or presiding officer, or to any of the persons employed. The counting of the votes need not take place the same evening, if it cannot be completed before 9 o'clock. If the counting cannot be completed the same evening, a sum not exceeding 1*l.* will be allowed to any presiding officer so employed, and 15*s.* to each of the clerks. If the rate book requires to be copied and arranged alphabetically, the expense will be calculated upon the principle that not less than thirty names of voters can be arranged and written in an hour, and the returning officer will be allowed to charge at the rate of one halfpenny for each name. Unless the leave of the Education Department has been previously and specially obtained, no expenses for making an alphabetical list of the rate book will be allowed in any case in which there has been no poll. It is considered that the six clear days allowed by the Order for election give sufficient time to enable the returning officer to prepare such list. With respect to ballot boxes and other fittings in boroughs, those provided for municipal elections must be used for the school board elections free of charge. (Section 14, Ballot Act, 1872.) As to parishes, if ballot boxes and fittings have been provided for a school board election in a parish, an arrangement should be made by which the same ballot boxes and

fittings should be used in a school board election in any other parish in the same union. The ballot boxes and other fittings, of course, belong to the school board of the parish which paid for them, but each parish which uses them would, no doubt, be willing to pay a certain sum for the privilege of using them.(*a*)

The election of a person as a member of a school board may be questioned by petition under the Municipal Elections Corrupt and Illegal Practices Act, 1884.(*b*) The question may also be raised by filing an information in the nature of a *quo warranto*. The election, however, cannot be questioned except within six months after the declaration of the election.(*c*)

No disqualification of, or defect in, the election of any person acting as member of the school board shall be deemed to vitiate any proceedings of the board in which he has taken part; in cases where the majority of members, parties to such proceedings, were duly entitled to act.(*d*) The majority of members present, duly entitled to act, and parties to the proceedings, must, however, constitute a quorum of members. If a quorum is present, no act or proceeding of the board shall be questioned on account of any vacancy or vacancies in their body.(*e*)

Hitherto reference has been made to a board being elected by the electors. If, however, the board either are not elected at the time fixed, or at any time cease to be in existence or to be of sufficient number to form a quorum, by reason of non-election, resignation, or otherwise, or neglect or refuse to act, the Education Department may proceed in the same way as if the board

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(*a*) *Circ.* 266; *School Board Elections—Expenses*, 17th June, 1886.

(*b*) 47 & 48 Vict. c. 70. Reference may be made to *In re West Bromwich School Board* (1880), 5 C. P. D. 191; 49 L. J. C. P. 641; 28 W. R. 766, which was decided under the Corrupt Practices (Municipal) Act, 1872.

(*c*) 36 & 37 Vict. c. 86, s. 9. See *De Souza* v. *Cobden* (1891), 1 Q. B. 687, where a person incapable of being elected a county councillor was elected, and her election was not called in question within the statutory period, she was declared incapable of acting as a member even after that period.

(*d*) 33 & 34 Vict. c. 75, s. 30 (3).

(*e*) 34 & 35 Vict. c. 75, s. 30 (2).

were in default.(*a*) The Education Department may also have recourse to its powers under Schedule 2 of the Act of 1870. If no members are elected, the Department may appoint another day for the election.(*b*) If there is a failure to elect members at the time prescribed for the triennial election, the retiring members, or so many as are willing to serve, are to be deemed to be re-elected; but if all the members refuse to serve, the Department may appoint another day for the election.(*c*) If an insufficient number of members are elected, or if, in the case of no members being elected, some of the retiring members are, and some are not, willing to serve, the school board, so far as it is constituted, may elect a person to fill each vacancy.(*d*)

The board shall meet for the despatch of business, and shall from time to time make regulations with respect to the summoning, notice, place, management, and adjournment of the meetings.(*e*) The quorum is fixed by the board, and must not be less than three members, and in the case of the metropolis not less than nine.(*f*) Every question is to be decided by a majority of votes of the members present and voting on the question.(*g*) The board shall, after the first meeting, and afterwards from time to time at their first meeting after each triennial election, appoint a chairman and vice-chairman for the three years for which the board hold office.(*h*) The chairman and vice-chairman must in every case, except in London, be chosen from the members of the board.(*i*) In case of an equality of votes at any meeting, the chairman for the time being of the meeting has a second or casting vote.(*k*) The names of the members present at each meeting, and in the case of a division, the names of those voting upon each question, are to be recorded.(*l*) This

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(*a*) 33 & 34 Vict. c. 75 s. 32. As to board being in default, *see post*, p. 39, *et seq.*

(*b*) *Ibid.*, Sched. 2, r. 5 (*a*). (*c*) *Ibid.*, r. 5 (*b*). (*d*) *Ibid.*, r. 6.

(*e*) *Ibid.*, Sched. 3, r. 1. (*f*) *Ibid.*, r. 1 (*d*).

(*g*) *Ibid.*, r. 1 (*e*). (*h*) *Ibid.*, Sched. 3, r. 2.

(*i*) The chairman of the London School Board may be elected "either from the members of the board or not." *Ibid.*, s. 37 (9). Ladies have been elected chairmen of school boards.

(*k*) *Ibid.*, Sched. 3, r. 5.

(*l*) 36 & 37 Vict. c. 86, Sched. 3 (*f*).

practically prevents voting by ballot at the meetings of the board.

Any minute made of proceedings at meetings of the school board, if signed by any person purporting to be chairman of the board, either at the meeting of the board at which such proceedings took place, or at the next ensuing meeting of the board, is receivable in evidence in all legal proceedings without further proof.(*m*) Until the contrary is proved, every meeting of the school board, in respect of proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act.(*m*)

The members of a school board may apply any money in their hands for the purpose of indemnifying themselves against any law costs or damages which they may incur in or in consequence of the execution of their powers.(*n*) No business involving the appointment or dismissal of a teacher, any new expenses, or any payment (except the ordinary parochial payments), or any business which requires the consent of the Education Department, shall be transacted unless notice in writing of such business has been sent to every member four days at least before the meeting.(*o*)

Certain further regulations with regard to the ordinary and extraordinary meetings of the board; the notice to be given of business to be transacted; the filling up of casual vacancies in the office of chairman or vice-chairman; the signing of orders of the board for payment of money; the appointment of officers;(*p*) the form and signing of precepts; and the proceedings of managers appointed by the board are contained in Schedule 3 of the Act of 1870, and Schedule 3 of the Act of 1873, which, since they have the force of a legislative enactment,(*q*) are imperative.

(*m*) 33 & 34 Vict. c. 75, s. 30 (4).
(*n*) *Ibid.* (5).
(*o*) 36 & 37 Vict. c. 86, Sched. 3 (*g*).
(*p*) The appointment of officers is not liable to stamp duty.
(*q*) 33 & 34 Vict. c. 75, s. 94; 36 & 37 Vict. c. 86, s. 26; 39 & 40 Vict. c. 79, s. 42.

The board may appoint a clerk, treasurer, and other necessary officers, including the teachers required for the board's schools,(*a*) and officers to enforce the bye-laws with reference to the attendance of children at school.(*b*) The board may assign them such salaries or remuneration(*c*) (if any) as they think fit, and may from time to time remove any of such officers.(*d*) No such appointment, however, can be made (except at the *first* meeting of the board) unless notice in writing has been sent to every member of the board.(*d*)

Two or more boards may arrange for the appointment of the same person to be an officer to both or all such boards.(*d*) Such officers shall perform such duties as may be assigned to them by the board or boards who appoint them.(*d*) There is not now any stamp duty payable on appointments.(*e*)

These officers hold office during the pleasure of the board.(*f*) The board, indeed, have entire control over their officers and the fixing of their salaries. There is no appeal given for the protection of the officer. The board may pay the expenses of persons offering themselves as candidates for offices in their appointment, if they previously notify that they will do so; if they do not so notify, they have no power to pay them, and payment, if made, will be disallowed by the auditor. If the board request the application of any particular candidate, they may legally agree to pay his expenses.(*g*)

The officers of the board being removable at the pleasure of the board, it follows that the court will not willingly grant a *quo warranto* against an officer alleged to have been illegally elected, although it has power to do so. This has been so held in the case of the clerk who, it was alleged, was not legally elected, on the ground that notice had not been sent to every member of the board

(*a*) 33 & 34 Vict. c. 75, s. 35.
(*b*) *Ibid.*, s. 36.
(*c*) This does not confer a power to pay an officer a gratuity, such payment being illegal. *Ex parte Mellish* (1863), 8 L. T. (N.S.) 47.
(*d*) 33 & 34 Vict. c. 75, s. 35.
(*e*) 38 Vict. c. 23, s. 14.
(*f*) 33 & 34 Vict. c. 75, s. 35.
(*g*) The law officers of the Crown have advised to the above effect.

prior to the appointment being made,(*h*) and that a person who was not a member of the board had voted in the election; writ refused.(*i*) "The court cannot allow so much expense to be incurred unnecessarily."(*k*)

The treasurer may be paid either by salary or by the allowance of commission on the transactions of the school board with him, but he cannot have any interest on money which he may advance to the board. A member of the board may be appointed treasurer without a salary; but in that case he must take no advantage of the balance in his hands in any way, as, if he were, it would render his office a place of profit, and he accordingly would be liable in penalties.(*l*) Again, a school board cannot appoint a banking company as their treasurer. Such a company is not in a position to act as treasurer, since a joint stock company cannot legally hold an office which is personal in its character; moreover, it cannot be made subject to any personal responsibility, nor, unless some individual be appointed treasurer, can any one be called upon to appear before the district auditor in the capacity of treasurer, and make a declaration when it may be necessary to require one as to the treasurer's accounts. There are also other difficulties which may arise if a legal treasurer be not appointed. The school board can, however, if they think fit, appoint the manager or some other officer of the bank, or some individual, to be their treasurer, leaving him to keep his account where he chooses, but it is requisite that there should be a treasurer personally responsible to the board.

If a schoolmaster or schoolmistress who has been dismissed, or has ceased to be any longer in the employment of the board, and during his or her service with the board occupied the board premises, unlawfully refuse to give up possession within three months, the board may recover possession summarily before a court of petty sessions.(*m*)

(*h*) As required by section 35 of the Act of 1870.

(*i*) *Bradley* v. *Sylvester* (1871), 25 L. T. 459; 35 J. P. 726; 36 J. P. 6, and see also *re Tudhoe*, 1 P. L. Stat. xxxv.

(*k*) *Ibid.*

(*l*) Cf. *Delane* v. *Hillcoat* (1829), 9 B. & C. 310.

(*m*) 33 & 34 Vict. c. 75, s. 86; 4 & 5 Vict. c. 28, ss. 17, 18.

To bodies thus constituted the Elementary Education Acts entrust the duty of completing and maintaining adequate school provision within each district.

School boards are empowered, for the purpose of providing schools, to borrow on the security of the school fund and local rate, with the consent of the Department, and in the case of industrial schools with the consent of one of Her Majesty's principal Secretaries of State,(*a*) and to spread the repayment over not more than 50 years.(*b*) All new school premises and enlargements must conform generally to the rules contained in Schedule 7 to the Code of Regulations, 1891, and the plans must be approved by the Department before such new premises and enlargements are passed.(*c*) The consent of the Education Department will only be granted where there is satisfactory proof that the additional school accommodation, which it is proposed to supply, is required in order to provide for the educational wants of the district.(*d*) The purposes for which the board may borrow are—(1) in providing or enlarging a schoolhouse, (2) in paying off any debt charged on the schoolhouse provided by them, or on any land acquired by them by gift, transfer, purchase, or otherwise for the purposes of the Acts, or (3) in any works, or improving or fitting up a school-house which, in the opinion of the Department, ought by reason of the permanent character of such works to be spread over a term of years.(*d*) The board may, if they so agree with the mortgagee, pay the amount borrowed, with the interest, by equal annual instalments not exceeding 50, and if they do not so agree, they shall annually set aside one-fiftieth of the sum borrowed as a sinking fund.(*e*) The purposes mentioned above are the only purposes for which a board have power to borrow. They have, therefore, no power to borrow money for the purpose of meeting their current expenses, nor to charge the ratepayers with interest paid for money so borrowed.(*f*)

(*a*) 39 & 40 Vict. c. 79, s. 15.
(*b*) 36 & 37 Vict. c. 86, s. 10.
(*c*) Code of Regulations, 1891, Art. 85.(*a*)
(*d*) 36 & 37 Vict. c. 86, s. 10.
(*e*) *Ibid.*
(*f*) *Reg.* v. *Reed* (1880), 5 Q. B. D. 483; 42 L. T. 835; 44 J. P.

The Public Works Loan Commissioners may, on the recommendation of the Education Department (or, in the case of an industrial school, of a principal Secretary of State,(*g*)) lend the money required on the security of the school fund and local rate, without requiring further security.(*h*) The loan must be repaid within 50 years, and the rate of interest will be 3½ per cent. per annum.(*h*) It may be also mentioned that the Public Works Loans Act(*i*) and the Local Loans Act(*k*) apply to school board loans, but whilst loans can be obtained under the Education Acts from the Public Works Loan Commissioners on favourable terms these Acts will scarcely be resorted to. The 37 Vict. c. 9, s. 2, authorised the Treasury to advance sums of money not exceeding 1,500,000*l.*, for the purpose of school loans, but this Act was repealed by the Statute Law Revision Act, 1883.

No loan of money can be obtained from the Public Works Loan Commissioners unless the whole cost of the school, exclusive of site, legal expenses, extra rooms for instruction authorised by the Code, and residences (if any), is kept within the sum of 10*l.* per child accommodated. An allowance will also be made in reference to the cost of a central hall not calculated in the accommodation(*l*) up to a maximum of 600*l.* Rooms for extra subjects recognised by the new Code, such as drawing, chemistry, &c., will have an allowance varying from 15*s.* to 20*s.* per square foot. From 275*l.* to 400*l.* will be allowed for a caretaker's house. From 275*l.* to 500*l.* will be allowed for a cookery centre. Whether the necessary loan be borrowed in the open market or not, extravagant plans cannot be approved.(*m*) The Department do not enter-

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633, reversing the decision of the Queen's Bench Division, 4 Q. B. D. 477. A loan may be raised in the case of a board "in default" by the members appointed by the Education Department, to meet expenses incurred by the members. Section 64 of 33 & 34 Vict. c. 75, *post*, p. 41.

(*g*) 39 & 40 Vict. c 79, s. 15.
(*h*) 36 & 37 Vict. c. 86, s. 10.
(*i*) 38 & 39 Vict. c. 89.
(*k*) 38 & 39 Vict. c. 83.
(*l*) See Code, 1891, Sched. 7, r. 8.
(*m*) *Ibid.*, r. 20.

tain applications for loans when the expenditure has been incurred without their previous sanction.(*a*)

For the purpose of borrowing from the Commissioners, the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages executed by them are to apply.(*b*) Accordingly, the mortgage must be according to the form set out in the schedule to that Act, or as near as may be.(*c*) It must be duly stamped and the consideration truly stated.(*c*) A register of mortgages is kept by the clerk to the Commissioners, and within 14 days after the date of any mortgage an entry of the number, date, and names of the parties shall be made in the register.(*d*) The register is open to inspection at all reasonable times by any person interested in any such mortgage without payment of any fee or reward.(*d*)

Any person entitled to any such mortgage may transfer his right and interest therein to any other person.(*e*) The transfer must be by deed duly stamped, in which the consideration is truly stated.(*e*) There is also a statutory form of the transfer.(*f*) A register of transfers is also kept by the clerk to the Commissioners.(*g*) The transfer must be produced to the clerk for registration within 30 days from its date if executed in the United Kingdom, or if executed elsewhere, within 30 days after its arrival.(*g*) The clerk may demand a sum not exceeding 5*s*. for each entry.(*g*)

Unless otherwise provided by the mortgage, the interest is to be paid half-yearly.(*h*) The Commissioners have power to borrow money at a lower rate of interest to pay off securities at a higher rate.(*i*)

The Commissioners may fix upon the repayment of money borrowed at a time and place agreed.(*k*) If they

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(*a*) See Code, 1891, Sched. 7, r. 21.
(*b*) 36 & 37 Vict. c. 86, s. 10.
(*c*) 10 Vict. c. 16, s. 75.
(*d*) *Ibid.*, s. 76.
(*e*) *Ibid.*, s. 77.
(*f*) *Ibid.*, s. 77; Sched. *c*.
(*g*) *Ibid.*, s. 78.
(*h*) *Ibid.*, s. 79.
(*i*) *Ibid.*, s. 80.
(*k*) *Ibid.*, s. 81

do so, then all the principal monies, with the interest thereon, must be paid on the date mentioned.(*k*) The period for which the loan was given should be unequivocally stated in the mortgage deed, and if no place is named the place for the repayment of the principal and interest is the office of the Commissioners.(*k*) If no time or place is fixed for the repayment of the money so borrowed, the party entitled to receive such money may at the expiration, or at any time after the expiration of 12 calendar months from the date of the deed, demand payment of the principal sum, with all arrears of interest, upon giving six months' previous notice for that purpose, and in the like case the Commissioners may, at any time, pay off the money borrowed on giving the like notice.(*l*) The notice must be either in writing or in print or both,(*l*) and if given by the mortgagee, is to be delivered to the clerk or left at the office of the Commissioners, and if given by the Commissioners shall be given to the mortgagee personally, or left at his residence.(*l*) If the mortgagee is unknown to the Commissioners, or cannot be found, the notice shall be advertised in the *Gazette*.(*m*) The interest is to cease on the expiration of notice to pay off the mortgage debt.(*n*)

In order to discharge the principal money borrowed on the security of any rates, the Commissioners are to appropriate and set apart out of such rates a sum equal to the prescribed part, and if no part has been prescribed, one-twentieth part of the sum so borrowed as a sinking fund, to be applied in paying off the sum so borrowed.(*o*)

If at any time the Commissioners are unable to pay off the mortgages of a certain class (if more than one mortgage), they are to decide by lot the order in which the mortgages are to be paid off.(*p*)

(*l*) 10 Vict. c. 16, s. 82. Thus no loan can be for a shorter period than 18 months.

(*m*) *Ibid.* In the *London Gazette*, if the office of the Commissioners is in England; in the *Edinburgh Gazette*, if it is in Scotland; and in the *Dublin Gazette*, if it is in Ireland.

(*n*) *Ibid.*, s. 83.

(*o*) *Ibid.*, s. 84.

(*p*) *Ibid.*, s. 85.

CHAPTER III.

SCHOOL BOARD IN METROPOLIS.

THE general provisions of the Act of 1870 with respect to the formation and the election of school boards in boroughs and parishes do not apply to the metropolis.(*a*) There is a series of special provisions in this respect applicable to the metropolis alone.

The "metropolis" means the places for the time being within the jurisdiction of the London County Council,(*b*) under the Metropolis Management Act, 1855.(*c*) For the purpose of the election of members, the metropolis is divided into the following divisions:—Lambeth: East Lambeth with 4 members, and West Lambeth with 6; Marylebone with 7; Finsbury with 6; Tower Hamlets with 5; Hackney with 5; Westminster with 5; Chelsea with 5; Southwark with 4; Greenwich with 4; and the City with 4.(*d*) The total number of members is thus 55.

The boundaries of the divisions are as follows:—Each of the divisions of Tower Hamlets, Hackney, Southwark, Westminster, and Chelsea has the same boundaries as the parliamentary borough(*e*) of the same name, except such parts as are outside the metropolis. The division of Finsbury includes such parts of the parliamentary borough of Finsbury as are within the metropolis and the parts of Furnival's Inn and Staple Inn respectively, which are outside the borough of Finsbury. The City

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(*a*) 33 & 34 Vict. c. 75, s. 37.
(*b*) 51 & 52 Vict. c. 45, s. 40.
(*c*) 33 & 34 Vict. c. 75, s. 3.
(*d*) *Ibid.*, s. 37 (1), sched. 5; *Order of Education Department*, 7th October, 1870; 48 & 49 Vict. c. 38, s. 2; *Order of Education Department*, 26th August, 1885.
(*e*) "Parliamentary borough" in this paragraph means a borough as defined by the Boundary Act, 1868: *Order of Education Department*, 7th October, 1870, Art. 9.

division includes the area comprised within the parliamentary borough of London, except those parts of Furnival's Inn and Staple Inn, which are within the borough. Marylebone includes the parliamentary borough of Marylebone and the parish of St. John, Hampstead; East Lambeth, the parishes of St. Mary, Newington, and Camberwell; West Lambeth, the parish of Lambeth, and the Wandsworth district as described in Schedule B., Part I., of the Metropolis Local Management Act, 1855; and Greenwich, the parliamentary borough of Greenwich, and all those parts of the parishes of Greenwich and Woolwich, and of the districts of Plumstead and Lewisham, as described in Schedule B., Part II., of the Metropolis Local Management Act, which are outside the said borough of Greenwich.(*f*)

The board bears the name of "The School Board for London."(*g*) It is a body corporate, having a perpetual succession and a common seal(*h*) and the constitution of an ordinary school board.(*i*) The general election of members takes place every third year from the year 1870 on the day in the month of November appointed by the board.(*k*) The vote is the cumulative vote. Thus, at every election for each division, every voter is entitled to a number of votes equal to the number of members to be elected for the division, and may give all such votes to one candidate, or may distribute them among the candidates as he thinks fit.(*l*)

In the City of London, members are to be elected "by the same persons and in like manner" as common councillors are elected.(*m*) Thus, every *male* person of full age, not subject to any legal incapacity, rated for premises to the police or any other rate at an annual value of at least 10*l*., and every person on the register of parliamentary voters, or entitled to be on the register, are

(*f*) *Orders of Education Department*, 7th October, 1870; 26th August, 1885.
(*g*) 33 & 34 Vict. c. 75, s. 37 (3).
(*h*) *Ibid.*, ss. 30, 37 (3).
(*i*) *Ibid.*, ss. 29—36, *ante*, pp. 10 *et seq.*
(*k*) *Ibid.*, s. 37 (4).
(*l*) *Ibid.*, s. 37 (5).
(*m*) *Ibid.*, s. 37 (6).

qualified to vote in the election of common councilmen in the ward in which the qualifying premises are situated.(*a*) It will be thus seen that women are excluded from voting at school board elections in the City of London. But the City members of the School Board for London are not to be elected for wards but for the whole city; and though they may be elected by the same persons, it does not seem that they can be elected "in like manner" as common councilmen. The Education Department, however, have power to make an Order as to elections which, so far as it relates to the metropolis, shall supersede any provision contained in the Acts relating to the election of common councilmen.(*b*)

In other divisions of the metropolis members are to be elected by "the same persons and in the *same* manner" as vestrymen under the Metropolis Management Act, 1855, and amending Acts.(*c*) Under the Metropolis Local Management Act "parishioners" are to elect,(*d*) and the word includes women. "Parishioners," said Lord HARDWICKE, "is a very large word, taking in not only inhabitants of the parish, but persons who are occupiers of lands, that pay the several rates and duties, though they are not resident."(*e*) Here, again, the Education Department are empowered to make an order which may supersede the provisions in the Metropolis Management Act, 1855, and amending Acts.(*f*)

The Act of 1870 directed that the board should *at once* proceed to supply their district with sufficient public school accommodation.(*g*) Any requisition sent by the Education Department to the board for this purpose, it was provided, might relate to any of the divisions for which members are elected in like manner as if it were a school district,(*h*) and it should not be necessary for

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(*a*) 12 & 13 Vict. c. xciv.; 30 & 31 Vict. c. i.
(*b*) 33 & 34 Vict. c. 75, Sched. 2, r. 4.
(*c*) *Ibid.*, s. 37 (6).
(*d*) 18 & 19 Vict. c. 120, s. 16.
(*e*) *Attorney-General* v. *Parker* (1747), 3 Atk. 577.
(*f*) 33 & 34 Vict. c. 75, Sched. 2, r. 4.
(*g*) 33 & 34 Vict. c. 75, s. 37 (7).
(*h*) As to school districts, see *ante*, p. 4.

the Department to publish any notices before sending such requisition.(*g*)

The chairman is to be elected by the school board.(*i*) He may be elected either from the members of the board or not.(*i*) If he is not an elected member of the board he shall, by virtue of his office, be a member of the board as if he had been so elected.(*k*) The board may pay the chairman such salary as they may from time to time, with the sanction of the Education Department, fix.(*l*)

In case of deficiency in the school fund the board is to apportion the amount required to be raised to meet the deficiency among the different parts of the metropolis mentioned in the third column of Schedule 1 to the Act of 1870,(*m*) in proportion to the rateable value of such parts as shown by the valuation lists for the time being in force under the Valuation (Metropolis) Act, 1869, or any other Act for making valuation lists; or, where there is no such valuation list, in the same proportion and according to the same basis in and according to which the then last rate made by the Metropolitan Board of Works (or London County Council(*n*)) was assessed.(*o*) Persons having the custody of valuation lists and rate books shall, when required by the school board, produce such lists and rate books to them, and allow the same to be inspected, or copies of them or extracts from them to be made by the board or any person appointed by them(*p*) For obtaining payment of the amount specified in any precept sent by the school board to the rating authority for any part of the metropolis, the board (in addition to any other powers and remedies) have the like powers as the

(*i*) 33 & 34 Vict. c. 75, s. 37 (9).

(*k*) *Ibid.* If the chairman be not an elected member he will be in addition to the number of elected members as fixed by the Education Department. See *ante*, p. 34.

(*l*) 33 & 34 Vict. c. 75, s. 38.

(*m*) This schedule will be found in the Appendix, *post.*

(*n*) 51 & 52 Vict. c. 45, s. 40.

(*o*) 36 & 37 Vict. c. 86, s. 16. The provision in the Act of 1870, which is now repealed, only provided for cases in which valuation lists were in force under the Valuation (Metropolis) Act, 1869, or had not come into force under that Act.

(*p*) 33 & 34 Vict. c. 75, s. 79.

London County Council(*a*) have for obtaining payment of any sum assessed by them on the same part of the metropolis.(*b*) The School Board for London are a body of persons authorised by law to require contributions payable out of the rates, within the meaning of the Valuation (Metropolis) Act, 1869.(*c*)

The School Board for London are also empowered to borrow money in pursuance of the Act of 1870, or for the purpose of providing or enlarging any offices (including all necessary conveniences and appurtenances) required by the board,(*d*) with the approval of the Education Department.(*e*) The sum may be borrowed from and may be lent by, formerly the Metropolitan Board of Works, and now the London County Council.(*f*) The amount is limited in the first place to a sum "not exceeding in the whole five hundred thousand pounds,"(*g*) but this sum may be exceeded with the sanction of the Education Department.(*h*) To raise the sum so lent, consolidated stock may be created;(*g*) and all sums received from the school board in respect of interest on or the principal of the loan are to be carried to the Metropolitan Consolidated Loans Fund.(*g*) The amount so lent is to be repaid with interest within such period not exceeding sixty years, as may be agreed upon between the County Council (formerly the Metropolitan Board of Works) and the school board, subject to the approval of the Treasury.(*g*)

The number of members of the board may be altered from time to time.(*i*) This is done by application to the Education Department by the board itself, or by any six of its members.(*i*) It must be shown to the satisfaction

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(*a*) 51 & 52 Vict. c. 45, s. 40.
(*b*) 33 & 34 Vict. c, 75, s. 37 (11). The powers of the London County Council in this respect are contained in 18 & 19 Vict. c. 120, ss. 72, 173, 174; and 25 & 26 Vict. c. 102, ss. 8, 12, 13.
(*c*) 32 & 33 Vict. c. 67, s. 32.
(*d*) 35 & 36 Vict. c. 27, ss. 2, 3.
(*e*) 33 & 34 Vict. c. 75, s. 58.
(*f*) *Ibid.*; 51 & 52 Vict. c. 45, s. 40.
(*g*) 32 & 33 Vict. c. 102, s. 37.
(*h*) 33 & 34 Vict. c. 75, s. 58.
(*i*) *Ibid.*, s. 39.

of the Department either (1) that the population of any of the divisions electing members, as shown by the current census, has "varied materially" from that shown by the previous census; or (2) that the rateable value of any of the divisions has "materially varied" from the rateable value of the same division ten years previously.(*i*) Thereupon the Education Department, after such inquiry as they think necessary, may, *if they think fit*, make an Order altering, by way of increase or decrease, the number of members of that and any other division.(*i*) If the number is reduced, the chairman of the board is at some meeting, as soon as may be after such reduction, to determine by ballot on the members who are to retire, so as to reduce the number of the board to the number to which it is so reduced.(*k*)

In all other respects the provisions relating to an ordinary school board apply to the School Board for London.

CHAPTER IV.

DEFAULTING SCHOOL BOARD.

THE Elementary Education Acts have taken security for their provisions being duly carried out by school boards and school attendance committees, through the power granted to the Education Department to declare them "in default."

The cases in which a school board may be deemed to be "in default" are:—

(1.) Failing to supply a deficiency in the public school accommodation for the district in accordance with the requisition sent by the Education Department on the formation of the school board, within twelve months after the sending of the requisition.(*l*)

(2.) Doing or permitting any act in contravention of or failing to comply with the regulations according

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(*k*) 33 & 34 Vict. c. 75, Sched. 2, part 1, r. 18. If the number is increased, the additional members will be elected by the voters.

(*l*) *Ibid.* ss. 6, 10, 11.

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(*c*) 32 & 33 Vict. c. 67, s. 32.
(*d*) 35 & 36 Vict. c. 27, ss. 2, 3.
(*e*) 33 & 34 Vict. c. 75, s. 58.
(*f*) *Ibid.*; 51 & 52 Vict. c. 45, s. 40.
(*g*) 32 & 33 Vict. c. 102, s. 37.
(*h*) 33 & 34 Vict. c. 75, s. 58.
(*i*) *Ibid.*, s. 39.

of the Department either (1) that the population of any of the divisions electing members, as shown by the current census, has "varied materially" from that shown by the previous census; or (2) that the rateable value of any of the divisions has "materially varied" from the rateable value of the same division ten years previously.(*i*) Thereupon the Education Department, after such inquiry as they think necessary, may, *if they think fit*, make an Order altering, by way of increase or decrease, the number of members of that and any other division.(*i*) If the number is reduced, the chairman of the board is at some meeting, as soon as may be after such reduction, to determine by ballot on the members who are to retire, so as to reduce the number of the board to the number to which it is so reduced.(*k*)

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(*l*) *Ibid.* ss. 6, 10, 11.

to which a school provided by a school board is required to be conducted.(*a*)

(3.) Failing to comply with a requisition of the Education Department requiring them to perform their duty, either as regards maintaining or keeping efficient the schools provided by them, or as regards providing additional school accommodation.(*b*)

(4.) Failing to fulfil their duty as a "local authority" under the Act of 1876.(*c*)

(5.) Failing to make bye-laws as to the attendance of children at school.(*d*)

(6.) In the case of a failure to elect a school board at the time fixed for the first election, or a school board ceasing to be in existence at any time or to be of sufficient number to form a quorum by reason of non-election, resignation or otherwise, or refusing or neglecting to act, the Education Department may proceed in the same manner as if there were a school board acting and the board were in default.(*e*)

Where the Education Department are satisfied after such inquiry as they think sufficient that any of the above instances (with the exception of No. 5, as to which *see post*) have taken place, they may by Order declare such board to be "in default."(*f*) By the same or any other Order they may appoint not less than five nor more than fifteen persons to be members of such school board, and may from time to time remove any member so appointed, and fill up any vacancy in the number of such members, whether caused by removal, resignation, death, or otherwise, and may add to or

(*a*) 33 & 34 Vict. c. 75, s. 16.
(*b*) *Ibid.*, s. 18.
(*c*) 39 & 40 Vict. c. 79, s. 27.
(*d*) 43 & 44 Vict. c. 23, s. 2; 39 & 40 Vict. c. 79, s. 27.
(*e*) 33 & 34 Vict. c. 75, ss. 32, 63.
(*f*) 33 & 34 Vict. c. 75, s. 63. The authority given to the Education Department, when a school board is in default, is similar in its nature to the authority given by the 29 & 30 Vict. c. 90, s. 49, to the Secretary of State (now the Local Government Board) when a local board of health, nuisance authority, or sewer authority are in default in carrying into effect their respective powers.

diminish the number of such members.(*g*) The members so appointed are to be deemed to be members of the board in the same manner in all respects as if they had been duly elected by the ratepayers.(*g*)

Any persons who were previously members of the board are deemed to have vacated their seats as if they were dead, after the date of the order of appointment;(*g*) but any such persons may be re-appointed members by the Education Department.(*g*) The members appointed by the Department hold office during the pleasure of the Department,(*g*) and may be remunerated for their services as the Department think fit.(*h*)

When the Department consider the default has been remedied, and everything necessary for that purpose has been carried into effect, they may by Order direct that members be elected for the school board in the same manner as on the first formation of the school board.(*i*) After the date fixed by the Order the members appointed by the Department cease to be members of the board, and the members so elected are to be members of the board in their room, but the members appointed by the Department are not to be disqualified from being so elected.(*k*) Until such order is made no person is to become a member of the school board otherwise than by the appointment of the Education Department.(*k*)

Upon the appointment of persons to be members of a school board "in default," the Education Department may certify their appointment.(*l*) They may also certify the amount of expenses incurred by such persons, and the amount of any *loan* required to be raised for the purpose of defraying any expenses so incurred, or estimated as about to be incurred.(*l*) This certificate is conclusive evidence of their appointment.(*l*) The expenses incurred in the performance of their duties by the members so appointed, including their remuneration (if any), are to be paid out of the school fund.(*m*) A loan (unlike the

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(*g*) 33 & 34 Vict. c. 75, s. 63.
(*h*) *Ibid.*, s. 65.
(*i*) *Ibid.*, s. 63; see *ante*, p. 12.
(*k*) *Ibid.*, s. 63.
(*l*) *Ibid.*, s. 64.
(*m*) *Ibid.*, s. 65.

case of an ordinary school board(*a*)) may be raised for the purpose of defraying the expenses so incurred or estimated as about to be incurred.(*b*) The school board cannot charge the school fund with the principal and interest of any loan exceeding the amount certified by the Education Department.(*c*)

The certificate of the Education Department is conclusive evidence that the amounts mentioned therein have been incurred or are required,(*d*) and where such expenses have been certified to have been so incurred, they shall be deemed to have been so incurred, and to have been properly paid out of the school fund.(*e*) Any deficiency in the school fund is to be raised out of the rates.(*f*)

Where a school board are in default, or are not properly fulfilling their duties, the Department may by Order direct that the then members shall vacate their seats, and that the vacancies shall be filled by a new election.(*g*) After the date fixed by any such Order, the then members of such board shall be deemed to have vacated their seats, and a new election shall be held in the same manner as if it were the first election.(*g*)

The cases of a defaulting school attendance committee may also be shortly noticed here. These cases are treated more fully under the subject-matter of each case:

(1.) Failure to perform their duty under the Act of 1876.(*h*)

(2.) Failure to make bye-laws as to the attendance of children at school.(*i*)

(*a*) See *ante*, p. 28.
(*b*) 33 & 34 Vict. c. 75, s. 64.
(*c*) *Ibid.*, s. 65.
(*d*) *Ibid.*, ss. 64, 65.
(*e*) *Ibid.*, s. 65.
(*f*) *Ibid.*; see also s. 54.
(*g*) *Ibid.*, s. 66.
(*h*) 39 & 40 Vict. c. 79, s. 27.
(*i*) 43 & 44 Vict. c. 23, s. 2; 39 & 40 Vict. c. 79, s. 27.

CHAPTER V.

TRANSFER AND RE-TRANSFER.

THERE are two ways in which school-houses or tenements occupied for the purposes of an elementary school may be transferred to the school board.

In all cases where the school board are satisfied that any person(*k*) has, independently of the Act of 1870, legal power to sell, let, or transfer the premises in question, whether occupied as school-houses or not, the school board may deal with him without the intervention of the Education Department at all,(*l*) and no consent of the Department is required. The same rule applies to any sale, lease, transfer of, or dealing with, books, school apparatus, or other school property over which any person has power of alienation.(*l*)

But if an "elementary school"(*m*) is vested in certain persons as trustees, and these trustees have no power, independently of section 23 of the Act of 1870, to sell, lease, or transfer the school, then, if the school is to be transferred to a school board, recourse must be had to that section, and the consent of the Education Department is required. The 23rd section (of which presently) provides the means by which a proposed transfer can be effected; and it should be observed that were it not for that section the managers of a school might be compelled, if subscriptions should fail, to retain a school-house without teachers and without scholars; whereas by taking advantage of that section, the managers in such an emergency are enabled to transfer their school to the board who have power(*n*) to enlarge or improve it, and to keep it in a state of efficiency.(*o*)

(*k*) "Person" includes body corporate: 33 & 34 Vict. c. 75, s. 3.
(*l*) 33 & 34 Vict. c. 75, s. 19; Resolution II. of Minute, 27th July, 1871.
(*m*) See 33 & 34 Vict. c. 75, s. 3.
(*n*) *Ibid.*, ss. 18, 19.
(*o*) See *Circular of Education Department*, 1st January, 1872.

But, further, the managers have power to transfer their school, only in order to relieve themselves from the responsibility of maintaining it, and for no other purpose. It was not the intention of the Legislature to enable trustees or managers to obtain money for property held by them in trust or for the discharge of debts for which they have made themselves personally responsible. If, indeed, it can be shown that the trustees of the school or other persons have, independently of the Act—by virtue of the original trust or otherwise—any legal power to charge, incumber, or mortgage the school premises, and that such power has been exercised, the mortgagee or incumbrancer will be protected, and any transfer will be made subject to the legal or equitable rights of such mortgagee or incumbrancer, whose rights are recognised by section 23. But if, independently of the Act, there is no power to charge or incumber the premises, then the consideration for the transfer thereof must be *nominal.* When schools have been erected, partly by pecuniary aid from the parliamentary grant, they cannot be legally mortgaged or incumbered, and therefore in such cases a mortgage or incumbrance cannot be recognised by the Department.(*a*)

Arrangements are sometimes proposed, which contemplate the payment of school expenses, incurred prior to the date of the transfer, but not charged upon the premises. But, according to the Act of 1870, the ratepayers cannot be made to contribute towards the expenses of any school unless it be a school *provided by a school board,* which means "a school conducted under the control and management of a school board;"(*b*) so that, until the date of transfer, a school board cannot undertake to contribute towards the expense of its maintenance.

The statutory provisions for the transfer by managers of a school to a school board are contained in the 23rd section of the Act of 1870. In the first place it should be premised that the managers cannot transfer any pro-

(*a*) See *Circular of Education Department*, 1st January, 1872.
(*b*) 33 & 34 Vict. c. 75, s. 14.

perty which is not vested in them, or in a trustee for them, or held by them in trust for the school,(*c*) although they may transfer or convey to the board all such interest in the school-house and endowment as is vested in them or in such trustee, or such smaller interest as may be required.(*c*) Further, where any person has any right given him by the trusts of the school to use the school for any particular purpose independently of the managers, his right shall not be interfered with except with his consent.(*c*) In the next place it is to be observed that every school transferred under this section "shall, to such extent and during such times as the school board have . . . control over the school, be deemed to be a school provided by the school board."(*c*) Lastly, the Education Department has no power to compel the transfer of any school to a school board. The Department can only *consent* to the terms of transfer *agreed* to by the managers of the elementary school and the school board of the district within which the school in question is situated.(*d*)

The managers of any elementary school(*e*) in the district of a school board may make an "arrangement" with the school board for transferring their school to such school board, and the school board may assent to such arrangement.(*f*) An arrangement may be made by the managers by resolution or other act as follows:—

(1.) Where there is any instrument declaring the trusts of the school, and such instrument provides any manner in which, or any assent with which, a resolution or act binding the managers is to be passed or done, then in accordance with the provisions of such instrument:

(2.) Where there is no such instrument, or such instrument contains no such provisions, then in the manner and with the assent, if any, in and with which it may be shown to the Education Department to have been usual

(*c*) 33 & 34 Vict. c. 75, s. 23.
(*d*) *Instr. re Transfer of Schools*, Art. 1.
(*e*) As to what is an elementary school, see *ante*, p. 4; *i.e.*, a voluntary school.
(*f*) 33 & 34 Vict. c. 75 s. 23.

for a resolution or act binding such managers to be passed or done:

(3.) If no manner or assent can be shown to have been usual, then by a resolution passed by a majority of not less than two-thirds of those members of their body who are present at a meeting of the body summoned for the purpose, and vote on the question, and with the assent of any other person whose assent under the circumstances appears to the Education Department to be requisite.(*a*) This majority of two-thirds of the school trustees anticipates any objection to the transfer of a school whose trustees are required to be members of any particular denomination or church.(*b*)

In every case the arrangement shall be made only (1) with the consent of the Education Department; and (2) if there are annual subscribers to the school, with the consent of a majority, not being less than two-thirds in number, of those of the annual subscribers who are present at a meeting duly summoned for the purpose, and vote on the question.(*c*) The consent here referred to should be obtained *in a general form.* That is to say, it should be to the proposed terms of arrangement for transfer subject to such modifications in detail as may be required by the Education Department before giving the consent of the Department.(*d*) A question will here arise as to who is an "annual subscriber." Will one who is in arrear with one or more annual subscriptions have the right to be present and vote, or will as many as like to come forward and pay only one annual subscription have a like right? Perhaps, however, it may be found that the instrument, if there be one, declaring the trusts of the school, defines who shall be deemed annual subscribers.

In the case of premises held under a trust, express or implied, the following rules are also to be observed:—

(1.) All questions relating to the title of the parties to the proposed arrangement, or affecting the subject-matter upon which it is to operate, must be considered

(*a*) 33 & 34 Vict. c. 75, s. 23.

(*b*) *Re Burnham National Schools, Ex parte Bates* (1873), L. R. 17 Eq. 241; 29 L. T. 495.

(*c*) 33 & 34 Vict. c. 75, s. 23.

(*d*) *Instruction as to Transfer of Schools*, Art. 14.

and settled by the legal advisers of the parties, and will not be investigated by the Education Department.

(2.) In considering whether any proposed arrangement should be approved, the Department will confine their attention to ascertaining that the terms of such arrangement are, in their opinion, proper and reasonable, and the approval expressed in any case will be limited accordingly.

(3.) As to the terms of the arrangement, no payment of rent beyond that charged upon, or reserved out of, the premises by the original lease, and no other valuable consideration, except an undertaking to insure and keep the premises in repair, and to keep down or redeem charges or incumbrances on the same will in general be sanctioned.(*e*)

If, however, there is any instrument declaring the trusts of the school, and such instrument contains any provision for the *alienation* of the school by any persons, or in any manner, or subject to any consent, then the arrangement shall be made by the persons in the manner and with the consent so provided.(*f*)

Where it appears to the Education Department that there is any trustee of the school who is not a manager, they shall cause the managers to serve on such trustee, if his name and address are known, such notice as the Education Department think sufficient.(*f*) The proposed terms of arrangement should be shown to him, and his observations thereon communicated by the clerk of the school board to the Education Department.(*g*) The Education Department "shall consider and have due regard" to his objections and representations.(*h*) The view which the school board and the managers take of his observations should also be communicated to the Department.(*i*)

(*e*) *Minutes of Education Department*, 17th July, 1871, Resolution I. See also *post*, p. 49, as to what may and may not be contained in the "arrangement."

(*f*) 33 & 34 Vict. c. 75, s. 23.

(*g*) *Instr. re Transfer of Schools*, Art. 8.

(*h*) 33 & 34 Vict. c. 75, s. 23.

(*i*) *Instr. re Transfer of Schools*, Art. 8.

Persons who have contributed to the establishment of the school may also make "objections and representations" respecting the proposed transfer, and the Education Department likewise "shall consider and have due regard" to them.(*a*) The Education Department have observed that if there are any societies (such as the National Society, the British and Foreign School Society, the Wesleyan Education Committee, the Roman Catholic Poor School Committee,or any local educational body) who have contributed to the establishment of the school, the proposed terms of arrangement should be shown to them, and their observations thereon communicated by the clerk of the school board to the Education Department. The view which the board and the managers take of these observations should also be communicated to the Department, who should be informed what practical reasons prevent the board and managers from agreeing to meet the objections made by the society to the arrangement on the ground that it involves an unnecessary departure from the terms of the original trust.(*b*)

The case of *The National Society* v. *The School Board for London*(*c*) shows the position of such societies as those just mentioned, which have contributed to the establishment of a school when the school is being transferred. The National Society was in the habit of granting money towards the establishment of elementary schools, and the trust deed of every school in union with the society contained a clause declaring that the school should "always be in union with and conducted according to the principles, and in furtherance of the ends and designs," of the society, and one of the terms of union was, that the children should "be instructed in the Holy Scriptures, and in the liturgy of the Established Church." The society assisted in establishing a school, and the trust deed was executed, which did not contain any provision as to the future alienation of the school, or as to any consent thereto. Under these circumstances it was

(*a*) 33 & 34 Vict. c. 75, s. 23.
(*b*) *Instr. re Transfer of Schools*, Art. 9.
(*c*) (1874) L. R. 18 Eq. 608; 21 L. T. 22.

held that the school might be transferred to a school board under the Act of 1870, without the consent of the society, and that the proper mode for the society to give effect to any objection to a transfer was by appearing before the Education Department.

It will thus be seen that neither the trustees, nor the founders of the school, have any power in relation to these transfers beyond the right of making a representation to the Education Department.

After the expiration of six months from the date of the transfer the consent of the Education Department shall be conclusive evidence that the arrangement has been made in conformity with the Act.(*d*)

The "arrangement" may provide for the absolute conveyance to the school board of all the interest in the school-house possessed by the managers, or by any person who is trustee for them, or for the school, or for the lease of the same, with or without any restrictions, and either at a nominal rent or otherwise, to the school board, or for the use by the school board of the school-house during part of the week, and for the use of the same by the managers, or some other person, during the remainder of the week, or for any arrangement that may be agreed on.(*d*) It may also provide for the transfer or application of any *endowment* belonging to the school, or for the school board undertaking to discharge any *debt* or incumbrance on the school not exceeding the value of the interest in the school-house or endowment transferred to them.(*e*) It may also provide for the board keeping down the interest on such incumbrance, provided the annual amount of interest does not exceed the annual value of the interest in the premises and endowment transferred to the board.(*f*)

The board must not undertake to pay any consideration other than a strictly nominal one (say 5*s*.), whether such consideration consists of a price or of a rent.(*g*) The

(*d*) 33 & 34 Vict. c. 75, s. 23.
(*e*) *Ibid.*, *Instr. re Transfer of Schools*, Art. 7 (*c*).
(*f*) *Instr. re Transfer of Schools*, Art. 7 (*d*).
(*g*) *Ibid.*, Art. 7 (*b*); *Minute of Education Department*, 17th July, 1871, Resolution I. (3).

arrangement must not provide for the payment by the board of any other debt, or for the keeping down by the board of the interest on any other debt;(*a*) nor must it provide for the payment by the board of the current expense of maintaining the school during any time *prior to the date of the transfer*, and this date must not be earlier than the date of the consent of the Education Department to the terms of arrangement for transfer.(*b*) It must not state terms as to the use to which the trustees or managers think they may legally put the school premises during any times when their use is not transferred to the board.(*c*) It must not prescribe the kind of instruction (whether religious or secular) to be given in the school.(*d*) It must not contain anything as to the examination or inspection of the school, the appointment of managers or teachers, the admission of children, or the general management of the school.(*d*) For the school, so far as transferred to the board, must be managed in every respect as the board for the time being see fit, subject only to sections 7 and 14 of the Act of 1870.

If the fittings, furniture, books, and apparatus of the school are private property, they should be dealt with by a distinct agreement outside of the arrangement submitted to the Department. If, however, these articles, not being private property, can only be dealt with by an arrangement under section 23, there must be *no* valuable consideration given for them or for their use by the board.(*e*)

Every school so transferred shall, to such extent and during such times as the school board have under such arrangement any control over it, be deemed to be *a school provided by the school board.*(*f*)

It is open for the school board, on certain conditions, to re-transfer to the managers any school or interest

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(*a*) *Instr. re Transfer of Schools*, Art. 7 (*e*).
(*b*) *Ibid.*, Art. 7 (*f*), *ante*, p. 44.
(*c*) *Ibid.*, Art. 7 (*b*).
(*d*) *Ibid.*, Art. 7 (*i*).
(*e*) *Ibid.*, Art. 7 (*g*).
(*f*) 33 & 34 Vict. c. 75, s. 23.

therein which has been transferred to them in the manner above described.(*g*) The re-transfer must be made to a body of managers qualified to hold the school or the interest therein under the trusts of the school as they existed before the transfer to the school board, and upon such re-transfer taking place, the board must convey all the interest in the school-house and in any endowment belonging to the school vested in them.(*g*) The proposal to re-transfer must be passed by resolution by a majority of not less than two-thirds of those members of the board, who are present at the meeting duly convened for the purpose, and vote on the question.(*g*)

The consent of the Education Department is necessary for the re-transfer of the school; and this consent cannot be obtained unless the Department are satisfied that any money expended upon the school out of a loan raised by the school board has been, or will be, on the completion of the re-transfer, repaid to the board.(*g*)

Every school so re-transferred shall cease to be a school provided by a school board (*i.e.*, a board school), and shall be held upon the same trusts on which it was held before it was transferred to the school board(*g*) (*i.e.*, it will become a voluntary school).

CHAPTER VI.

RETURNS AND PUBLIC INQUIRY.

In order to enable the Education Department to determine as to the sufficiency and efficiency of school accommodation in any particular district, the Education Department are empowered to require the local authority,(*h*) or any person or persons the Department may appoint,(*i*) to make a return to the Department containing such particulars with respect to elementary schools

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(*g*) 33 & 34 Vict. c. 75, s. 23.
(*h*) *Ibid.*, ss. 8, 13, 67.
(*i*) 36 & 37 Vict. c. 86, s. 19.

and children requiring elementary education in their district as the Department may require.(*a*)

The returns are to be made in the metropolis by the school board, and in all other districts where school boards are formed by the school board of the district.(*b*) In other cases as follows:—In boroughs by the council; in parishes not situated in the metropolis, or in a borough by persons appointed for the purpose, or by the overseers.(*b*) The persons appointed for the purpose may be appointed as follows:—(1) The Department may request the overseers (or other officers who have power) to summon a vestry, and they shall thereupon summon a vestry for the purpose of appointing two or more persons to be the "local authority," for the purpose of making these returns,(*b*) and the vestry are then to appoint two or more persons accordingly.(*b*) (2) The Department may themselves appoint one or more persons to make the return.(*c*) The "local authority," or the persons appointed direct by the Department, may, with the sanction of the Education Department, employ persons to assist in making such returns, and may pay those persons such remuneration as the Treasury may sanction.(*d*) The sanction of the Education Department to the employment of assistants is necessary, in order to obtain the sanction of the Treasury to the payment of their remuneration. Other reasonable expenses may be incurred by the "local authority" or the persons appointed by the Department if the Treasury sanction them.(*d*) The remuneration and the expenses so sanctioned are paid by the Education Department.(*e*)

The mode in which returns are obtained is by the Education Department drawing up forms and supplying them to the persons as above indicated, who are to make the returns for the purpose of their being filled up.(*f*)

(*a*) 33 & 34 Vict. c. 75, s. 67; 36 & 37 Vict. c. 88, s. 19. See also section 13 of the 33 & 34 Vict. c. 75, which provides for the periodical "stock-taking" of the schools of every district.

(*b*) 33 & 34 Vict. c. 75, s. 69.

(*c*) 36 & 37 Vict. c. 86, s. 19.

(*d*) 33 & 34 Vict. c. 75, ss. 69, 70; 36 & 37 Vict. c. 86, s. 19.

(*e*) 33 & 34 Vict. c. 75, s. 69.

(*f*) *Ibid.*, s. 68.

The local authority or the persons appointed are thereupon to send a form to the managers or principal teacher of every school required to be included in the return requiring it to be filled up, and the managers or principal teacher (as the case may be) shall return the same filled up within the time specified in the form.(*f*) Refusal or neglect to fill up the form is punished by the school in question not being "taken into consideration among the schools giving efficient elementary education in the district."(*g*)

If the local authority fail to make the returns, the Education Department may appoint any person or persons to make them, and the person or persons so appointed shall have the same powers and authorities as the local authority.(*h*)

The Act of 1870 enacts that "every school board shall make such report and returns and give such information to the Education Department as the Department may from time to time require."(*i*) The Act of 1876 adds that every "local authority" under that Act (*i.e.*, the school board and school attendance committee(*k*)) may be called upon by the Education Department to do the same.(*l*)

The Education Department have a further power in this connection. They may appoint an inspector of returns.(*m*) It will be his duty to inquire into the accuracy and completeness of the returns that have been made, and into the efficiency and suitability of any school mentioned in the returns or which ought to have been mentioned therein; and to inspect and examine the scholars in every such school.(*m*) Where there is no return he shall proceed as if there had been a defective return.(*m*) He is also entitled to inspect the school-house or examine any scholar, or examine the school books and registers, or make copies or extracts therefrom,(*n*) and should the managers or teacher of the school refuse to let him do so, "such school shall not be taken into consideration

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(*g*) 33 & 34 Vict. c. 75, s. 72.
(*h*) *Ibid.*, s. 70.
(*i*) *Ibid.*, s. 95.
(*k*) 39 & 40 Vict. c. 79, s. 7.
(*l*) *Ibid.*, s. 43.
(*m*) 33 & 34 Vict. c. 75, s. 71.
(*n*) *Ibid.*, s. 72.

among the schools giving efficient elementary education to the district."(*a*)

The "local authority" may also call upon the *registrar* of births and deaths to transmit to them a return with such particulars concerning deaths and births of children as may be specified by the local authority.(*b*) The local authority may pay, as part of their expenses to the registrar making such return, such fee as may be agreed upon between them and the registrar, not exceeding twopence for every birth and death entered in the return.(*b*) The local authority may supply a form for the purpose of the return.(*b*) This form must have previously been approved by the Local Government Board, and in that case the return must be made in the form so supplied.(*b*)

It is also open for school boards to call for returns by schools, under the Act of 1873, in any school district where a bye-law under section 74 of the Act of 1870 is in force. The school board may call upon the managers of any public elementary school within its district to supply them with reasonable information with respect to the attendance of children residing in their district who attend such school.(*c*) The school board will supply forms for this purpose.(*c*) The managers of the school must cause the forms to be truly filled up and returned in the manner required by the school board, or such information to be given as will enable the school board to ascertain whether a child resident within their district and attending that school attends it in the manner required by the bye-law.(*c*) If they should fail to do so, they must cause to be produced to such member or officer of the school board, or other person as may be duly authorised in that behalf by the school board, at any reasonable time when required by him, the registers and other books and documents containing information as to the attendance of children at such school, and shall permit him to inspect and take copies of and extracts from the same.(*d*) In the event of any differences between the

(*a*) 33 & 34 Vict. c. 75, s. 72.
(*b*) 39 & 40 Vict. c. 79, s. 26.
(*c*) 36 & 37 Vict. c. 86, s. 22.
(*d*) *Ibid.*, s. 22.

school board and the managers as to whether the information required by the forms is or is not reasonable, the matter is to be referred to the Education Department.(*d*) Their decision is final.(*d*)

Reference has already been made to public inquiry(*e*) being held by the Education Department. The public inquiry may take place at the instance of (1) persons feeling aggrieved by the decision of the Education Department with regard to the public school accommodation for a district;(*f*) (2) persons applying for the formation of a school district;(*g*) (3) a school board proposing to put in force the provisions of the Lands Clauses Acts, relating to the purchase and taking of land otherwise than by agreement; (*h*) (4) persons feeling aggrieved by a proposal to form or dissolve a united school district;(*i*) and (5) persons feeling aggrieved by a proposal to form a contributory district.(*k*)

The public inquiry so held is regulated by the following provisions:—

(1.) The Education Department are to appoint some person who shall proceed to hold the inquiry.(*l*)

(2.) Notice shall be published of every sitting of the inquiry (except adjourned sittings) seven days at least before the holding thereof.(*m*)

(3.) The person appointed to hold the inquiry shall hold his sittings in some convenient place in the neighbourhood of the school district to which the subject of the inquiry relates. He shall there hear, receive, and examine any evidence and information offered, and hear and inquire into any objections or representations made respect-

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(*e*) The provisions in the Act of 1870 are sections 9, 12, 13, 20, 41, 43, and 51.

(*f*) *Ibid.*, ss. 9, 13.

(*g*) *Ibid.*, s. 12.

(*h*) *Ibid.*, s. 20.

(*i*) *Ibid.*, ss. 41, 43.

(*k*) *Ibid.*, ss. 49, 51.

(*l*) *Ibid.*, s. 73 (1).

(*m*) *Ibid.*, s. 73 (2).

ing the subject of the inquiry. He may from time to time adjourn any sitting.(*a*)

(4.) He shall make a report in writing to the Education Department, setting forth the result of the inquiry, and stating his opinion, with his reasons, on the subject, and the objections and representations (if any) made on the inquiry, and his opinion thereon.(*b*) The Education Department are thereupon to cause a copy of the report to be deposited with the school board (if any), or if there is none, the town clerk of the borough, or the churchwardens or overseers of the parishes to which the inquiry relates.(*b*) The Department are to *cause* the notice of the deposit to be published,(*b*) but how they are so to cause it the section fails to say; probably they will themselves publish it and recover the costs, as in (5) *infra.*

(5.) The Education Department may make an Order directing that the costs of the proceedings and inquiry shall be paid, according as they think just, either by the district as if they were expenses of a school board, or by the applicants for the inquiry. Such costs may be recovered in the former case as a debt due from the school board, or if there is no school board, as a debt due from the rating authority, and in the case of the applicants, as a debt due jointly and severally from them. The Education Department may, if they think fit, before ordering the inquiry to be held, require the applicants to give security for such expenses, and, in case of their refusal, may refuse to order the inquiry to be held.(*c*)

(*a*) 33 & 34 Vict. c. 75, s. 73 (2).
(*b*) *Ibid.*, s. 73 (3).
(*c*) *Ibid.*, s. 73 (4).

CHAPTER VII.

THE BOARD SCHOOL.

A BOARD SCHOOL is a school provided by a school board.(*d*) A school so provided shall be under the control and management of the school board, in accordance with the following regulations:—

(1.) The school shall be a public elementary school.(*e*)

(2.) No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school.(*f*)

The section(*g*) which enables a school board to make bye-laws as to school attendance specially provides that no "bye-laws shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs."

A school board may in certain cases delegate certain of its powers to a body of "managers."(*h*) The term "managers" includes all persons who have the management of any elementary school, whether the legal interest in the school-house is or is not vested in them.(*i*) The board may from time to time delegate to the managers any of their powers "under this Act" (*i.e.*, the Act of 1870),(*k*) *except the power of raising money*, and, in particular, may delegate the control and management of any school provided by them with or without any conditions or restrictions.(*l*) The board appoint the managers, and their number must not be less than three.(*l*)

(*d*) 33 & 34 Vict. c. 75, s. 14.
(*e*) For definition of "public elementary school," see *ante*, p. 5.
(*f*) 33 & 34 Vict. c. 75, s. 14.
(*g*) *Ibid.*, s. 74 (2).
(*h*) *Ibid.*, s. 15.
(*i*) *Ibid.*, s. 3.
(*k*) It would appear that the board cannot delegate any of their powers under subsequent Acts.
(*l*) 33 & 34 Vict. c. 75, s. 15.

The regulations contained in Schedule 3 to the Act of 1870, as to the proceedings of the school board, are applicable to managers in so far as they are not inconsistent with the regulations relating to the proceedings of managers in the same schedule.(*a*)

The managers may elect a chairman of their meetings. If no such chairman is elected, or if the chairman elected is not present at the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of such meeting. The managers may meet and adjourn as often as they think proper. The quorum of the managers shall consist of such number of members as may be prescribed by the school board that appointed them, or if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question, and in case of an equal division of votes the chairman shall have a second or casting vote.(*b*) The proceedings of managers shall not be invalidated by any vacancy or vacancies in their number.(*b*)

The board may from time to time remove all or any of the managers.(*c*) They may also add to or diminish the number of or otherwise alter the constitution or powers of the body of managers.(*c*) Any manager may resign on giving written notice to the board.(*c*) In the event of a board being deemed "in default" for neglect of regulations of public elementary schools, "every act or omission" of the managers "shall be deemed to be permitted by the board unless the contrary be proved."(*d*)

It is the duty of the school board to "maintain and keep efficient" every board school under their care.(*e*) It is also their duty to provide from time to time such *additional* school accommodation as is, in their opinion, necessary in order to supply a sufficient amount of public school accommodation for their district.(*e*) If at any time in the opinion of the Education Department the

(*a*) See Appendix.
(*b*) 33 & 34 Vict. c. 75, Sched. 3.
(*c*) *Ibid.*, s. 15.
(*d*) *Ibid.*, s. 16.
(*e*) *Ibid.*, s. 18.

board should fail to perform their duty in either of these respects, the Department may send them a requisition requiring them to fulfil their duty; and if the board should fail within the time limited by such requisition (which must *not* be *less* than three months) to comply therewith to the satisfaction of the Education Department, "such board shall be deemed to be a school board in default,(*f*) and the Education Department may proceed accordingly."(*g*)

Wherever, indeed, there is insufficient public school accommodation in any district, the school board (whether in obedience to any requisition or not) may provide, by building(*h*) or otherwise, school-houses properly fitted up.(*i*) They may also improve, enlarge, and fit up their school-houses, and supply school apparatus and everything necessary for the "efficiency" of their schools.(*i*) Under this provision a school board may, with a view of maintaining the "efficiency" of a public elementary school, vote a portion of their funds to the purchase of books for prizes.(*k*)

Further, a school board may discontinue any school provided by them, or change the site of any such school, if they satisfy the Education Department that the school to be discontinued is unnecessary, or that such change of site is expedient.(*l*) They may also purchase and take on lease any land, and any right over land, or may exercise any of such powers.(*m*) The consent of the Education Department is not necessary where a school

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(*f*) As to school board "in default," see *ante*, p. 39.

(*g*) 33 & 34 Vict. c. 75, s. 18.

(*h*) By reference to section 96 of the Act of 1870, it will be seen that no application for parliamentary grants in aid of building elementary schools could be received after 31st December, 1870.

(*i*) 33 & 34 Vict. c. 75, s. 19.

(*k*) The opinion of Sir RICHARD BAGGALLAY and Sir JOHN HOLKER, when law officers of the Crown. To the question whether a school board were justified in devoting part of the fund arising from school fees to the payment of money for *regular attendance* at school, the Local Government Board answered that the expenditure was not authorised by statute.

(*l*) 33 & 34 Vict. c. 75, s. 18.

(*m*) *Ibid.*, s. 19.

board hire or lease premises which are private property.(*a*)

The application of the proceeds of the sale of parish property to defray the costs of establishing public elementary schools has been sanctioned by the Local Government Board in several cases.(*b*)

It may be mentioned in this connection that under special circumstances a faculty was granted for the erection of a school on a portion of a parish churchyard closed for burials by Order in Council. The circumstances were that no other suitable site could be found. The churchyard was closed for burials under the 16 & 17 Vict. c. 134, in 1856. Very few burials had since taken place therein, and none in ground on which it was proposed to build the school. There had at no time been many burials in the ground, and none, it was believed, since 1828. There were no tombs or monuments on the proposed site. The Education Department had approved the site conditionally on a medical certificate of its healthiness being given.(*c*)

A valuer appointed for the inclosure of a common may allot land for the site of any school, or garden to be attached thereto.(*d*)

A school board, with the consent of the Education Department, may provide offices for themselves. They must, however, satisfy the Department that having regard to the large population of their district it is "necessary and proper" that they should provide an office.(*e*) The Department may thereupon authorise the board to provide an office by "building or otherwise," and the board for that purpose shall have the same power as they have for the purpose of providing sufficient school accommodation and of borrowing (*f*) So that when the

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(*a*) *Minute re Transfer of Schools to School Board*, 17th July, 1871, Resolution II.

(*b*) The School Board of London have made provisions for the letting of board school rooms on week-day evenings and on Sundays, but they are not to be let for political purposes at any time nor for other than Sunday school purposes on Sundays.

(*c*) *In re Bettison* (1874), L. R. 4 Ad. & Ecc. 294.

(*d*) 8 & 9 Vict. c. 118, s. 34.

(*e*) 39 & 40 Vict. c. 79, s. 42.

(*f*) *Ibid.*; 36 & 37 Vict. c. 86, s. 10; Public Works Loans Act,

recommendation of the Education Department has been obtained, the Public Works Loan Commissioners may advance the amount required.

School boards are empowered to purchase land for the purpose of providing sufficient school accommodation.(*g*) Upon the land so purchased they may build school-houses, and they may build them in such a way as they in their discretion think proper. They are not fettered in any way with reference to the light and air to which an adjoining proprietor may be entitled, as such proprietor may claim compensation for such interference under the Lands Clauses Consolidation Acts(*h*), as hereinafter pointed out. The board may purchase the land either by agreement or compulsorily, and for this purpose the Lands Clauses Consolidation Acts(*i*) are incorporated with the Elementary Education Acts,(*k*) and the School Sites Acts (*l*) are to apply.(*m*)

First, then, as to taking land by agreement under the Lands Clauses Consolidation Act, 1845.(*n*) The school board may agree with the owner of land required to be taken, and with all parties having any estate or interest in the same, for the absolute purchase, for a consideration in money, of the land required.(*o*) Parties under disability are likewise empowered to sell and convey the lands or their interest in the lands required.(*p*) The compensation to be paid to persons under disability (unless the amount has been determined by the verdict of a jury or by arbitration, or by the valuation of a surveyor appointed by two justices) is not to be less than shall be

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1875 (38 & 39 Vict. c. 89). Previous to the passing of this provision school boards had no power to provide offices, and the School Board for London had to obtain a special Act for the purpose.

(*g*) 33 & 34 Vict. c. 75, s. 20.

(*h*) *Clark* v. *School Board for London* (1874), L. R. 9 Ch. App. 120; 29 L. T. 903; 38 J. P. 101, reversing 28 L. T. 657.

(*i*) These are 8 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18.

(*k*) 33 & 34 Vict. c. 75, s. 20 (1).

(*l*) These are 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; 14 & 15 Vict. c. 24.

(*m*) 33 & 34 Vict. c. 75, s. 20.

(*n*) 8 Vict. c. 18.

(*o*) *Ibid.*, s. 6.

(*p*) *Ibid.*, ss. 7, 8.

determined by the valuation of two able practical surveyors, one being nominated by each of the parties, or if the two surveyors cannot agree, by the valuation of any such third surveyor as any two justices shall for that purpose nominate.(*a*) The purchase money is to be deposited in the bank for the benefit of the parties interested.(*a*)

The School Sites Acts(*b*) also enable school boards to acquire or purchase land by agreement, as a site for a school or for the residence of the schoolmaster or schoolmistress. The phrase "school board" is to be substituted for "trustees or managers of a school within the meaning of those Acts."(*c*) Any person duly seised in land may convey by way of gift, *sale or exchange*, in fee simple, or for a term of years, any quantity of such land not exceeding one acre as a site for a school or a residence of the schoolmaster or schoolmistress.(*d*) If the grant is made by a person seised only for life the person next entitled must join in the grant.(*d*) Any portion of waste or commonable land may be gratuitously conveyed.(*d*) In any case where land is granted without any consideration, the death of the donor within twelve months does not avoid the grant.(*e*) The Chancellor and Council of the Duchy of Lancaster are also empowered to grant lands to the school board for the same purposes, the sum paid for the site being paid to the Receiver-General of the Duchy.(*f*) If the land should cease to be used for any of the purposes for which it might have been conveyed it reverts to the estate from which it was granted.(*g*) Persons under a disability,(*h*) corporations, justices, trustees and commissioners holding land for

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(*a*) 8 Vict. c. 18, s. 9.

(*b*) These are the School Sites Act, 1841 (4 & 5 Vict. c. 38); School Sites Act, 1844 (7 & 8 Vict. c. 37); School Sites Act, 1849 (12 & 13 Vict. c. 49); School Sites Act, 1851 (14 & 15 Vict. c. 24); see Sched. 4 to 33 & 34 Vict. c. 75.

(*c*) 33 & 34 Vict. c. 75, s. 20.

(*d*) 4 & 5 Vict. c. 38, s. 2.

(*e*) 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49, s. 4; see 9 Geo. 2, c. 36.

(*f*) 4 & 5 Vict. c. 38, s. 3.

(*g*) *Ibid.*, ss. 2, 3.

(*h*) *Ibid.*, s. 5.

public, ecclesiastical, parochial, charitable, and other purposes,(*i*) are likewise empowered to convey.

Any number of sites may be granted for separate schools although the aggregate quantity of land thereby granted should exceed one acre; but the site of such school or residence must not exceed one acre;(*k*) nor must the aggregate sites in the same ecclesiastical district, if the parish has been divided into ecclesiastical districts,(*l*) or in the same parish(*m*) if the parish has not been divided into ecclesiastical districts, exceed one acre.(*n*)

A form of grant has been prescribed.(*o*)

In the case of land sold by an ecclesiastical corporation sole, if the purchase money does not exceed the sum of 20*l*., the same may be retained by the party conveying for his own benefit.(*p*) If it exceeds that sum, then as the bishop of the diocese may appoint.(*p*) The school board, on purchasing, are not required to see to the due application of the purchase money.(*p*)

The school board are also empowered to sell or exchange any lands or buildings which they may have acquired under the School Sites Acts.(*q*)

Next as to the purchasing and taking of land "otherwise than by agreement," *i.e.*, compulsorily. This can be done under the Lands Clauses Consolidation Act, 1845, and amending Acts.(*r*)

These Acts are incorporated with the Act of 1870, "except the provisions relating to access to the special Act;" and in construing those Acts the "special Act" shall be construed to mean the Act of 1870,(*s*) together with

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(*i*) 4 & 5 Vict. c. 38, s. 6.
(*k*) *Ibid.*, s. 9.
(*l*) 14 & 15 Vict. c. 24, s. 3.
(*m*) 12 & 13 Vict. c. 49, s. 3.
(*n*) 4 & 5 Vict. c. 38, s. 9.
(*o*) *Ibid.*, s. 10.
(*p*) *Ibid.*, s. 11.
(*q*) *Ibid.*, s. 14.
(*r*) 33 & 34 Vict. c. 75, s. 20. These Acts are 8 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18.
(*s*) *Ibid.*, c. 75, s. 20 (1).

the Act confirming the Order of the Education Department for the purchase of the land (as to which see *infra*).(*a*) The promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include "any right over land."(*b*) These words, "any right over land," include an easement over land, such as a right of way required by the school board to obtain access to their school premises, and this they can acquire under the Act, without purchasing the land itself.

It is settled that when powers of taking land compulsorily are conferred for certain purposes, the promoters of the undertaking who seek to put in force these powers can only do so for the purposes for which they are authorised to take the land, and that they cannot lawfully take the land for what are generally termed collateral purposes foreign to their undertaking. The principle applies to a railway company, and also applies to a municipal body who have power to take lands compulsorily for the purpose of improvements; but, as a railway company is chiefly seeking profit in the transaction, whereas in the case of a municipal body profit is not their object, in construing the Act of Parliament, greater liberality is shown towards a municipal body, such as a school board, than is shown to a railway company, the latter being looked upon more as a body of persons speculating for their own benefit.(*c*)

If the compensation claimed, where the land is taken compulsorily, does not exceed 50*l.*,(*d*) or if the land be in possession of a person who is a tenant for a year or from year to year, and the parties should differ,(*e*) the claim may be settled by two justices.(*f*) If the compensation claimed or offered exceed 50*l.*, and if the party claiming compensation desire it, the claim may be settled by arbitration, and if not, by the verdict of a jury.(*g*)

(*a*) 36 & 37 Vict. c. 86, s. 15.
(*b*) 33 & 34 Vict. c. 75, s. 20 (1).
(*c*) *Cf.* judgment of CHITTY, J., in *Rolls* v *School Board for London* (1884), 27 Ch. D., p. 642.
(*d*) 8 Vict. c. 18, s. 22.
(*e*) *Ibid.*, s. 121.
(*f*) *Ibid.*, s. 22.
(*g*) *Ibid.*, ss. 23, 41, 42.

If the amount of compensation is to be determined by arbitration, unless both parties concur in the appointment of one arbitrator, each party is to appoint an arbitrator,(*h*) and the arbitrators are to appoint an umpire, before entering upon the matters referred to them, to decide any matters on which they may differ.(*i*) When the question is to be determined by the verdict of a jury, the jury is to be summoned by the sheriff(*k*) upon request from the school board to that effect.(*l*) A special jury may be had at the request of either party.(*m*)

Before putting in force any of their powers with respect to the purchase and taking of lands "otherwise than by agreement," there are certain formalities which it is necessary for the board to observe :—

(1.) They must *publish*(*n*) during three consecutive weeks in the months of October and November, or either of them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require.(*o*) Duplicates of the plan here deposited should at the same time be deposited in the Private Bill Office and the Office of the Clerk of the Parliaments.(*p*) Where the same are deposited after the prorogation of Parliament and before the 30th of November, they shall be so deposited on the 30th of November.(*p*)

(2.) After such publication they must *serve a notice* on every owner or reputed owner, lessee or reputed lessee, and occupier of the land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land.(*q*)

(*h*) 8 Vict. c. 18, s. 25.
(*i*) *Ibid.*, s. 27.
(*k*) *Ibid.*, s. 41.
(*l*) *Ibid.*, s. 39.
(*m*) *Ibid.*, s. 54.
(*n*) As to the mode of publishing notices, see *post*.
(*o*) 33 & 34 Vict. c. 75, s. 20 (2*a*).
(*p*) *Cf.* Standing Orders of the House of Commons and of the House of Lords.
(*q*) 33 & 34 Vict. c. 75, s. 20 (2*b*).

(3.) The notice shall be served—

(*a.*) By delivery of the notice personally on the person required to be served, or if such person is absent abroad, to his agent; or

(*b.*) By leaving the notice at the usual or last known place of abode of such person, or by forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person.(*a*)

These requirements being complied with, the next step on the part of the school board is to petition the Education Department. They may, if they think fit, present a petition under their seal to the Department, praying that an order may be made authorising them to put in force the powers of the Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned.(*b*) The petition must state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice.(*b*) It should be accompanied by a statutory declaration, showing that the several requirements as to the publication and service of notices have been complied with, together with copies of the several notices, and any further evidence that the Department may from time to time require.

The next step in this procedure is by the Education Department. If, on consideration of the petition and proof of the publication and service of the notices they think fit to proceed with the case, they may, *if they think fit*, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed Order, and also direct such person to hold a

(*a*) 33 & 34 Vict. c. 75, s. 20 (2 *c*).
(*b*) *Ibid.*, s. 20 (3).

public inquiry.(*c*) If the inquiry is held the Department may, after receiving a report made upon the inquiry, make the Order prayed for.(*d*) That is to say, they may authorise the school board to put in force the powers of the said Acts, or any of them, and either absolutely or with such conditions and modifications as they may think fit.(*d*) The school board must thereupon serve a copy of the Order so made "in the manner" upon the persons in which and upon whom notices in respect of the land to which the Order relates are required "to be served."(*e*) Duplicate copies of the Order will doubtless be supplied by the Education Department for service.

The Order, however, has no legal validity unless it has been confirmed by Act of Parliament.(*f*) It is the duty of the Education Department, as soon as conveniently may be, to obtain such confirmation.(*f*) The bill for confirming the Order may be opposed, in which case the committee to whom the same is referred "shall consider all the orders or certificates comprised in such bill."(*g*) The Act confirming such Order shall be deemed to be a public general Act of Parliament,(*h*) and along with the Act of 1870 is construed to mean the Special Act for the purposes of the Lands Clauses Consolidation Acts.(*i*)

The Education Department, in case of their refusing or modifying the Order, may make such Order as they think fit, for the "allowance of the costs, charges, and expenses" of *any person* whose land is proposed to be taken of and incident to such application and inquiry(*k*) respectively(*l*). The scale on which these costs will be

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(*c*) *Ibid.*, s. 20 (4). The mode of holding public inquiries is set out at p. 55.

(*d*) 33 & 34 Vict. c. 75, s. 20 (5).

(*e*) *Ibid.* See *ante*, p. 66.

(*f*) *Ibid.*, s. 20 (6).

(*g*) Standing Orders of the House of Commons and of the House of Lords.

(*h*) 33 & 34 Vict. c. 75, s. 20 (6).

(*i*) 36 & 37 Vict. c. 86, s. 15.

(*k*) The Education Department may deal with the costs before directing the inquiry. See *ante*, p. 56.

(*l*) 33 & 34 Vict. c. 75, s. 20 (7).

allowed, it would appear, is the scale adopted in courts of law, and not the parliamentary scale.(*a*) These costs (if allowed by the Department) become a charge upon the school fund of the district to which the Order relates.(*b*) They may be paid by annual instalments (not exceeding five), together with interest, "after the rate of five pounds in the hundred," from the date of allowance, upon so much of the principal sum as still remains unpaid.(*b*)

The "costs, charges, and expenses" incurred by the Education Department "to such amount as the Commissioners of Her Majesty's Treasury think proper to direct," become, like the costs of a private person, a charge upon the school fund of the district to which the Order relates.(*b*) The amount will be paid by the Treasury to the Education Department. The amount will then be repaid to the Treasury from the school fund.(*b*) This may be done by annual instalments (not exceeding five) at the same rate of interest and in the same manner as the costs of the private person.(*b*) The interest will run from the date of the direction by the Treasury.(*b*)

What has been said above, it will be observed, refers to the purchase of *land* by school boards. Section 21 of the Act of 1870 deals with the purchase of *schools and sites* by the managers of public elementary schools. For this purpose managers are "any persons desirous of establishing a public elementary school" who have obtained "the approval of the Education Department to the establishment of such school."(*c*) Managers so constituted are enabled to purchase a school-house or a site for the same as if they were acting under the Lands Clauses Consolidation Act, 1845, and Acts amending the same, which (except so much as relates to the purchase

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(*a*) *In re Morley* (1875), L. R. 20 Eq. 17; 32 L. T. 524.

(*b*) 33 & 34 Vict. c. 75, s. 20 (8).

(*c*) *Ibid.*, s. 21. It will be observed that this definition of "managers" is somewhat different from that given in section 3, which is the definition applicable throughout the Elementary Education Acts.

of land otherwise than by agreement) are incorporated.(*d*) In construing those Acts for the purposes of this provision, "the Special Act" shall be construed to mean the Act of 1870; "the promoter of the undertaking" shall be construed to mean the "managers;" and "land" shall be construed to include "any right over the land."(*d*) A form of conveyance is prescribed by the School Sites Acts.(*e*) That form may be followed here, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school(*f*) within the meaning of the Act of 1870, or some one of such purposes which may be specified, and for no other purpose whatever.(*g*) Land may be acquired by managers (as above defined) under the Lands Clauses Consolidation Acts, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.(*g*)

It has already been stated that a school board may purchase land for *school purposes*.(*h*) They are also empowered to *sell, lease, or exchange* the whole or any part of any land or school-house belonging to them which they do not require.(*i*) For this purpose the Charitable Trusts Acts, 1853 to 1869,(*k*) which relate to the sale, leasing, and exchange of lands belonging to a charity are to apply, with this modification, that the Education Department shall be deemed to be substituted in those Acts for the Charity Commissioners.(*l*) Accordingly, if it appear to the school board that any part of their land, or any school-house, may be beneficially let on lease, they may lay a statement and proposal in

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(*d*) 33 & 34 Vict. c. 75, s. 21.

(*e*) See 4 & 5 Vict. c. 38, s. 10.

(*f*) These purposes are contained in sections 3, 7, and 14 of the Act of 1870. See Appendix.

(*g*) 33 & 34 Vict. c. 75, s. 21.

(*h*) *Ante*, p. 61.

(*i*) 33 & 34 Vict. c. 75, s. 22. When the land has been acquired under the School Sites Acts, *secus ante*, p. 62.

(*k*) These are the 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; and 32 & 33 Vict. c. 110.

(*l*) 33 & 34 Vict. c. 75, s. 22.

relation thereto before the Education Department, who may make an order for that purpose.(*a*) Upon the like application by the school board the Department may, under special circumstances, authorise the sale or exchange of their land or buildings;(*b*) and all such leases, sales, exchanges, and other transactions authorised by the Education Department shall be deemed to be valid in law.(*c*)

The Education Department are, for the purposes of the Charitable Trusts Acts, 1853 to 1869, to be deemed to be persons interested in any elementary school to which those Acts are applicable, and the endowment thereof.(*d*) It should be added that the Public Parks, Schools and Museums Act, 1871,(*e*) exempts gifts and bequests of land, or of money to be laid out in land, for an elementary school from the Mortmain Acts.

All public elementary schools are rateable to the relief of the poor. A school board are rateable in respect of a school occupied by them, whether they are owners or lessees thereof.(*f*) There is, however, no uniform basis of assessment, some schools being assessed upon the school accommodation, some upon the average attendance, and some, again, at so much per cent. on the capitalised value of the site and of the building.

CHAPTER VIII.

LOCAL AUTHORITIES.

THE whole area of England and Wales is divided between two classes of local educational authorities—the school board and school attendance committee; the former

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(*a*) 16 & 17 Vict. c. 137, s. 21; 18 & 19 Vict. c. 124, ss, 16, 39; 23 & 24 Vict. c. 136, s. 15.

(*b*) 16 & 17 Vict. c. 137, s. 24.

(*c*) *Ibid.*, s. 26.

(*d*) 33 & 34 Vict. c. 75, s. 78.

(*e*) 34 Vict. c. 13.

(*f*) *West Bromwich School Board* v. *Overseers of West Bromwich* (1884), 13 Q. B. D. 929.

created by the Act of 1870, the latter by the Act of 1876. The main duties of these bodies under the term "local authority" are to enforce the measures of indirect compulsion introduced by the Act of 1876,(*g*) and the measures of universal direct compulsion introduced by the Act of 1880.(*h*) The school board carry out these duties in the district within their jurisdiction;(*g*) while a school attendance committee carry them out in all other districts.(*i*) The school attendance committee are appointed annually, if the district be a borough, by the council of the borough, and if it be a parish, by the guardians of the union in which such parish is situate.(*k*)

Power is given to the Education Department to authorise the appointment of a separate school attendance committee by an urban sanitary authority;(*l*) but it must not comprise any borough, and it must be co-extensive with one or more parishes not within the jurisdiction of a school board, the population being not less than 5,000 according to the last census.(*l*) The committee so appointed, to the exclusion of the committee appointed by the guardians, is to enforce the provisions in the sanitary district.(*l*) Where the urban sanitary authority is not, and does not comprise, a borough, and is not wholly within the jurisdiction of a school board, and does not come within the foregoing provisions, it may elect members to represent it on the school attendance committee of its union.(*l*) The number of such members is fixed by the Education Department, and must not exceed three.(*l*) But the formation of a new school board within a district where a school attendance committee are appointed by the urban sanitary authority takes that district at the expiration of two months from the election of the school board out of the jurisdiction of the committee.(*l*) Any bye-laws in force in an urban sanitary district, or in any part thereof, before the appointment of the committee, continue in force, if not revoked or altered by the committee.(*l*)

(*g*) 39 & 40 Vict. c. 79, s. 7.
(*h*) 43 & 44 Vict. c. 23, s. 2.
(*i*) *Ibid.*; 43 & 44 Vict. c. 23, s. 2.
(*k*) 39 & 40 Vict. c. 79, s. 7.
(*l*) *Ibid.*, s. 33.

The school attendance committee may consist of not less than six nor more than twelve members; one-third at least, however, in the case of a committee appointed by the board of guardians, is to consist of *ex officio* guardians.(*a*) If there are no *ex officio* guardians the whole number must be chosen from the elected guardians, or if there are *ex officio* guardians but not enough to make a third of the total number, the deficiency will be made up from the elected guardians. The council or the guardians may from time to time add to or diminish the number of members of the school attendance committee appointed by them.(*b*) A committee appointed by the guardians are appointed at the first meeting after the annual election of guardians or at some other meeting fixed with the approval of the Local Government Board.(*c*) The committee will continue in office (the committee being appointed annually, *supra*) until the first meeting of the council or guardians appointing it after the next annual election of councillors and guardians, and thereafter until the new committee are appointed.(*d*) Any casual vacancy in a school attendance committee may be filled up by the body who appointed it.(*e*) In the case of a committee appointed by the guardians an elected guardian would take the place of an elected guardian, and an *ex officio* guardian the place of an *ex officio* guardian. The rules which regulate the proceedings of managers appointed by a school board are to apply to the proceedings of the school attendance committee.(*f*)

In the case of a parish which has no separate school board and which has been constituted a contributory district to a school board district, the parish is under the jurisdiction of a school attendance committee of the district which includes the parish and not the school board of the district to which it is contributory.(*g*) It, therefore,

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(*a*) 39 & 40 Vict. c. 79, s. 7.
(*b*) *Ibid.*, s. 32.
(*c*) *Ibid.*, Sched. 2, r. 6.
(*d*) *Ibid.*, r. 5.
(*e*) *Ibid.*, r. 6.
(*f*) *Ibid.*, r. 3. See *ante*, p. 58, and Sched. 3, of Act of 1870, in Appendix.
(*g*) *Reg.* v. *Vane and Others* (*Cumberland Justices*); *In re The*

devolves on the school attendance committee and not on the school board to make bye-laws as to attendance at school for the parish, and to enforce such bye-laws, and the parish is liable to contribute to the expenses of the school attendance committee in like manner as if it had not been a contributory district.(*g*)

Every local authority are to direct one or more of their officers, or the officers of the council or guardians appointing the school attendance committee to carry out the duties prescribed under the Acts,(*h*) and to enforce the bye-laws for the time being in force within the jurisdiction of the authority.(*i*) They have also power to pay, if they think fit, such officers, and may, if need be, appoint and pay fresh officers of their own.(*k*) The school attendance committee, however, can only appoint, employ, or pay such officers with the consent of the council or guardians appointing the committee, and if appointed by the guardians they must also have the consent of the Local Government Board.(*l*) In a union a clerk to the guardians shall be the clerk of the school attendance committee.(*m*) If there be an assistant clerk to the guardians he cannot act as clerk to the school attendance committee, except as assistant to the clerk. The remuneration of the clerk, as, indeed, of all the officers of the committee, will be such as the committee assign and the guardians and the Local Government Board approve.(*n*) A school attendance committee appointed by guardians must act for every parish in the union which is not for the time being under

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Guardians of Penrith Union and The Overseers of Castle Sowerby (1882), 51 L. J. M. C. 114.

(*h*) 39 & 40 Vict. c. 79, s. 28; 43 & 44 Vict. c. 23, s. 9.

(*i*) 39 & 40 Vict. c. 79, s. 28.

(*k*) *Ibid.* A registrar of births and deaths is not an officer of the guardians within this section. Any person so appointed or employed must have reached the age of twenty-one years: *General Order of Local Government Board*, 14th April, 1877, Art. 5.

(*l*) *Ibid.*, s. 31. Relieving officers may be appointed school attendance officers for districts of a school attendance committee appointed by guardians, but not in other districts.

(*m*) *Ibid.*, s. 34.

(*n*) *Orders of Local Government Board*, 14th April, 1877, Art. 9.

a school board(*a*) or a committee appointed by the urban sanitary authority.(*b*) The committee are empowered to appoint small local committees for different parishes or other areas in their district to aid them in their work, and to give them such information as they require;(*c*) but such committees are not to be entrusted with the power of making bye-laws or taking proceedings before a court of summary jurisdiction.(*d*) A local committee may consist of not less than three persons, being either wholly members of the council, guardians, or authority appointing the school attendance committee, or partly such members and partly other persons.(*e*)

The functions of the committee have already been indicated.(*f*) The committee, like a school board, must report to the Education Department any infraction of the 7th section of the Act of 1870, which regulates the times and conditions of giving religious instruction,(*g*) commonly called the "conscience clause," and also furnish the Department with such returns as may be called for by them.(*h*) It is incumbent on the committee, on being informed of cases of children liable to be sent to industrial schools under the Act of 1876, or under the Industrial Schools Act, 1866, to take proceedings, unless they think it inexpedient to do so.(*i*) Another duty of the committee will be to make bye-laws for any parish as to the attendance of children at school, in the manner prescribed by the Act,(*k*) and when such bye-laws are made to enforce them.(*k*) The committee are empowered for the discharge of their duties to require from registrars,

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(*a*) 39 & 40 Vict. c. 79, ss. 7, 32.
(*b*) *Ibid.*, ss. 32, 33.
(*c*) *Ibid.*, s. 32. This is a power which appears to have been little exercised: *Report of Commission on Elementary Education Acts*, p. 31.
(*d*) 39 & 40 Vict. c. 79, s. 32.
(*e*) *Ibid.* The rules regulating the proceedings of a local committee appear in Sched. 2 to Act of 1876, in the Appendix.
(*f*) *Ante*, p. 71.
(*g*) 39 & 40 Vict. c. 79, s. 7.
(*h*) *Ibid.*, s. 43.
(*i*) *Ibid.*, s. 13.
(*k*) *Ibid.*, s. 21; 43 & 44 Vict. c. 23, s. 4.

in addition to certified copies of entries in particular cases, general returns of births and deaths of children, and to pay for any such returns a fee not exceeding twopence for every birth and death entered in the returns.(*l*) They may also, by notice, exempt for certain periods from the restrictions contained in section 9 of the Act of 1876 (*post*) children above the age of eight years for the necessary operations of husbandry, and the ingathering of crops; but such periods are not to exceed in the whole six weeks between the 1st of January and the 31st of December in any year.(*m*)

If the committee make default in their duty, the Education Department may appoint persons for a period not exceeding two years, to perform the duty of the defaulting committee to the exclusion of the committee. Such persons shall not be subject to any control on the part of the council or guardians who appointed the defaulting committee. The remuneration and expenses of such persons, as certified by the Education Department, will be recoverable from the council or guardians by whom the defaulting committee was appointed.(*n*) The Education Department shall annually report to Parliament the cases in which default proceedings have been taken by them.(*n*) The Education Department have thus the fullest powers to secure that the school attendance committee fulfil their duties.

The officer of a local authority is empowered in certain circumstances to enter places of employment. He must first of all apply to a justice of the peace and show to him that there is reasonable cause to believe that a child is employed in contravention of the Act of 1876.(*o*) It matters not whether the child is so employed in a building or not. The justice may thereupon, by order under his hand, empower the officer to enter such place at any reasonable time within forty-eight hours from the date of the order, and examine such place and any person

(*l*) 39 & 40 Vict. c. 79, s. 26. Observe that it is the registrar who is to make the returns, &c., and not the superintendent registrar.
(*m*) 39 & 40 Vict. c. 79, s. 9.
(*n*) *Ibid.*, s. 27.
(*o*) *Ibid.*, *ss. 5, 47; 43 & 44* Vict. c. 23, s. 4.

employed therein touching the employment of such child therein.(*a*) Any person refusing admission to the officer or obstructing him in the discharge of his duty in this respect shall for each offence be liable on summary conviction to a penalty not exceeding 20*l.*(*a*)

The school attendance committee cannot incur any expenses without the consent of the council or guardians or authority appointing them, and where appointed by the guardians without the consent also of the Local Government Board.(*b*) Where the expenses are incurred by a committee appointed by a council, they shall be paid out of the borough fund, or borough rate.(*b*) Where they are incurred by a committee appointed by guardians, they shall be paid out of the poor rate of the parishes in which the committee act, according to the rateable value of each parish.(*b*) The fund, therefore, out of which these expenses are to be paid, is to be raised out of the poor rate of the several parishes.(*c*)

The school attendance committee must "from time to time," certify to the guardians, in a prescribed form, the expenses which they have legally incurred.(*d*) In that form the particulars of the expenditure are to be stated, with the name and address of the person to whom each sum is due. Although the order requires the committee to send to the guardians an estimate of the expenses quarterly,(*e*) it does not fix any period for sending the certificate of the expenses actually incurred. Such certificate is to be sent from time to time according to the discretion of the committee; but it will probably be found convenient to send it periodically, whether quarterly or otherwise. On receipt of this certificate it will devolve upon the guardians to make the necessary payments; and in doing so they must follow the course prescribed by the Act of 1876. It is provided by section 31 of that Act, that the expenses

(*a*) 39 & 40 Vict. c. 79, s. 29.
(*b*) *Ibid.*, s. 31.
(*c*) *Ibid.; Circular of Local Government Board*, 15th September, 1877, Art. 2.
(*d*) *General Order of Local Government Board*, 14th April, 1877, Arts. 14, 15.
(*e*) *Ibid.*, Art. 13.

of the committee shall be paid "out of a fund to be raised out of the poor rate of the parishes in which the committee act for the purposes of this Act according to the rateable value of each parish." Having regard, however, to the provisions of section 49,(*f*) it is clear that the word "parish," in section 31, will mean that part only, which is under the jurisdiction of the committee, in any case in which that jurisdiction does not extend over the entire parish. The expenses, therefore, are to be paid, not out of the common fund of the union, but out of a special common fund, which is to be formed by the contributions from the several parishes, and parts of parishes, which are under the jurisdiction of the committee. Those parishes and parts of parishes, therefore, which are within the jurisdiction of a school board, or within a municipal borough, or within the district of an unban sanitary authority which has been authorised to appoint and has appointed a school attendance committee, will be exempt from contributing to the fund in question. In assessing contributions to the common fund in question, the rateable value will be readily ascertained from the approved valuation lists, if there be any; and, if not, from the current poor rate. In the case of a part of a parish, the calculation of the contribution must be confined to the rateable value of that part.

For the purpose of raising this special common fund, the guardians have the same powers as they have for the purpose of obtaining contribution to their common fund under the Acts relating to the relief of the poor. They will accordingly issue orders to the overseers, calling for special contributions. These orders should be distinct from the contribution orders issued by the guardians under the Poor Law Acts,(*g*) though they may be framed in a similar form, adapted to the circumstances of the case. With respect to a part of a parish, the guardians shall have "the like power of obtaining payment of a contribution from the said part of a parish as they have of obtaining a contribution from the whole parish;"(*h*) and

(*f*) 39 & 40 Vict. c. 79, s. 49.

(*g*) *Recommendation of Local Government Board; cf. Circular Letter*, 15th September, 1877, Par. 6.

(*h*) 39 & 40 Vict. c. 79, s. 49.

as it is further provided that in such a case, "the overseers of the entire parish shall be deemed to be the overseers of such part of a parish,"(*a*) the contribution order relating to such part should accordingly be addressed to those overseers.

It will be incumbent upon the overseers to pay out of the poor rates the sums which may be called for by the guardians, and, consequently, it will not be necessary, except where the jurisdiction of the school attendance committee extends over part only of the parish, that the overseers should keep any separate accounts with reference to these transactions, but the payments will be entered in their ordinary account in the receipt and payment book.(*b*) In any case in which the jurisdiction of the school attendance committee extends over a part only of the parish, it is provided that "the overseers of the entire parish shall be deemed to be the overseers of such part of a parish, and a rate in the nature of a poor rate may be levied therein by such overseers, either as a separate rate, or as an addition to the poor rate;"(*c*) and, further, that the guardians shall "have the like power of obtaining payment of a contribution from the said part of a parish, as they have of obtaining a contribution from the whole parish."(*c*) In any case of this kind the overseers should keep and submit to the auditor a separate account of this special levy, whether it be collected as a separate rate or as an addition to the poor rate.(*d*)

The expenses (if any) of a school attendance committee appointed by an urban sanitary authority are paid out of a fund raised out of the poor rate of the parish, or parishes, comprised in the district of such authority, according to the rateable value of each parish.(*e*) For the purpose of obtaining payment of such expenses, the urban sanitary authority have the same power as a

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(*a*) 39 & 40 Vict. c. 79, s. 49.

(*b*) *Circular of Local Government Board to Overseers of the Poor*, 15th September, 1877, Art. 2.

(*c*) 39 & 40 Vict. c. 79, s. 49.

(*d*) *Ibid.*, c. 61, s. 37; *Circular of Local Government Board*, 15th September, 1877.

(*e*) 39 & 40 Vict. c. 79, s. 33.

board of guardians have for the purpose of obtaining contributions to their common fund under the Acts relating to the relief of the poor, and the accounts of such expenses shall be audited as the accounts of other expenses of the sanitary authority.(*f*)

In the event of a school board being appointed for any school district, the authority acting at the time of such appointment as the local authority shall continue to act until the expiration of two months after the election of the board, and shall then cease to act for the district.(*g*) Nevertheless, all bye-laws made by the local authority shall continue in force until they are revoked or altered by the school board.(*g*)

The Act of 1876 provides that "all enactments relating to guardians and their officers, and to relief given by guardians, shall, subject to the express provisions of this Act, apply as if the guardians, including the school attendance committee appointed by them and their officers acting under this Act, and expenses incurred and money paid for school fees and relief given under this Act, were respectively acting, incurred, and paid and given as relief under the Acts relating to the relief of the poor."(*h*) So that there apply to school attendance committees the provisions of the Poor Law Amendment Act, 1867,(*i*) which enact that "where a union extends into several distinct jurisdictions, every matter, act, charge, or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union."

(*f*) 39 & 40 Vict. c. 79, s. 33, see *supra*.

(*g*) *Ibid.*, s. 36.

(*h*) 39 & 40 Vict. c. 79, s. 34. One effect of this provision is that parents residing in a union extending into different counties may be summoned for bye-law offences before the justices of either county: *Reg* v. *Eaton* (1881), 8 Q. B. D. 158; 51 L. J. M. C. 31; 46 L. T. 179.

(*i*) 30 & 31 Vict. c. 106, s. 27. Expenses under 42 & 43 Vict. c. 48, s. 4, are to be paid as provided by this section.

CHAPTER IX.

COMPULSORY ATTENDANCE.

THE power granted by the Act of 1870 to school boards to compel attendance of children at school was (with the exception of the provision of half-time attendance under the Factory Acts) a new departure in English legislation, though the principle of compulsory attendance had already been admitted in the Half-time Acts.

The three Elementary Education Acts dealing with compulsory attendance of children at school are the Act of 1870,(*a*) the Act of 1876,(*b*) and the Act of 1880.(*c*) The Act of 1870 established optional compulsion; the Act of 1876 established indirect compulsion; while the Act of 1880 established universal direct compulsion. The Act of 1870 made the adoption of bye-laws, regulating the attendance of children at school, optional in school board districts. The Act of 1876 extended this option to all other school districts in England, and aimed at securing attendance by enabling the local authority(*d*) to forbid the employment of uninstructed children, and by stringent provisions against wastrel and idle children up to the age of fourteen. By the Act of 1880 this option was converted into an obligation on the part of every local authority. That Act, however, did not repeal the indirect methods of getting children to school which had been enacted in 1876. These remain side by side with the local bye-laws as a collateral security for attendance, in the form of the prohibition of the employment of children who have not the legal qualification, and of penal clauses dealing with those who, being thus debarred from work, are habitually absent from school. These clauses of the Act of 1876 are still available to deal with absence from school where it is flagrant, binding over, in

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(*a*) 33 & 34 Vict. c. 75.
(*b*) 39 & 40 Vict. c. 79.
(*c*) 43 & 44 Vict. c. 23.
(*d*) *i.e.*, the school board and school attendance committee: 39 & 40 Vict. c. 79, s. 7.

the first instance, the culprit to attend regularly in future. The bye-laws, which have since the Act of 1880 been universally adopted, though varying in their provisions in different localities, take cognisance of the smallest deviations from regular attendance, and provide for summary punishment on the parent of the defaulter.

The Act of 1870, in conferring on school boards the power of making bye-laws, compelling the attendance at school of children, or, to be more accurate, to "cause the child to attend school" (*i.e.*, to "cause the child to receive the instruction provided in the school"(*e*)) between five and thirteen years of age, limited that power by certain conditions.(*f*) Such bye-laws must not contain any infringement of the "conscience clause," *i.e.*, they are not "to prevent the withdrawal of any child from any religious observance or instruction in religious subjects,"(*g*) nor require of children attendance at school on any day exclusively set apart for religious observance by their parents, nor be at variance with existing labour laws.(*g*) They may provide, too, for the remission of fees, in whole or in part, in cases of ascertained poverty;(*h*) for the imposition of penalties for the breach of any bye-laws;(*i*) and for revoking or altering any bye-law previously made.(*k*) And they are to set forth certain standards to be passed for total and for partial exemption from the obligation to attend school.(*l*) But the following are declared to be reasonable excuses for absence:—(1) "efficient instruction" received in some other way; (2) hindrance through sickness or other unavoidable cause; and (3) the absence of any public elementary school within three miles measured by the nearest road from the residence of the child.(*m*)

(*e*) *Saunders* v. *Richardson* (1881), 7 Q. B. D. 388.
(*f*) 33 & 34 Vict. c. 75, s. 74.
(*g*) *Ibid.*, s. 74 (2).
(*h*) *Ibid.*, s. 74 (3). The power conferred under this sub-section to *pay* school fees was repealed by section 52 of the Act of 1876. It is true that section 52 of the Act of 1876 is itself repealed, but this circumstance does not revive the repealed provision: 13 Vict. c. 21, s. 5.
(*i*) *Ibid.*, s. 74 (4). (*k*) *Ibid.*, s. 74 (5).
(*l*) *Ibid.*, s. 74.
(*m*) *Ibid.* See further as to "reasonable excuses" at pp. 87, 93, *et seq.*

Such bye-laws must receive the approval of the Education Department.(*a*) But the school board, not less than one month before submitting them for the approval of the Department, must deposit a printed copy of them at their office(*b*) for inspection by any ratepayer, and supply a printed copy gratis to any ratepayer(*a*) asking for it. They must also publish a notice of the deposit by advertising the same in some one or more of the newspapers circulating in the district of the board whose bye-laws are so deposited.(*c*) The Department, before approving the bye-laws, are to be satisfied that such deposit has been made and notice published, and they may cause such inquiry to be made in the district as they think requisite.(*d*) Such bye-laws, after having been sanctioned by an Order in Council, have the force of law in the school district for which they are made, and they must be set out in an Appendix to the next Annual Report of the Education Department.(*d*) Any proceeding to enforce a bye-law may be taken, and any penalty for the breach may be recovered in a summary manner; but penalty and costs must not exceed 5*s*.(*d*) If a distress warrant is subsequently issued, the costs of such warrant are in addition to and are not included in the sum of 5*s*.(*e*)

It will thus be seen that compulsory powers were given under the Act of 1870 to school boards, but that it was within the option of the school board whether it should exercise such powers or not.

The Act of 1876, though in other respects of great importance, will perhaps, in days to come, be chiefly memorable for the declaration which it placed on the

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(*a*) 33 & 34 Vict. c. 75, s. 74.

(*b*) If the board have no office, the deposit will be made at the room where the board usually meet or at the office of the clerk.

(*c*) 33 & 34 Vict. c. 75, s. 74; 36 & 37 Vict. c. 86, s. 20; *Order of Education Department*, 13th August, 1875, Art. 2.

(*d*) 33 & 34 Vict. c. 75, s. 74.

(*e*) *Cook* v. *Plaskett* (1882), 46 L. T. 383. In making the application for the warrant affirmative evidence must be given that the defendant has goods upon which there could be a levy: *Reg.* v. *German and Others* (*Coram* DAY and GRANTHAM, JJ., M. Sit. 1891 Q. B. D.).

statute book—the declaration of the duty of every parent to educate his child. It enacts that "it shall be the duty of the parent of every child(*f*) to cause such child to receive sufficient elementary instruction in *reading, writing, and arithmetic;* and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act."(*g*) Thus, for the first time, a legal obligation was created, binding on every parent, to give his child an education sufficient to ground it in the rudiments of learning, and at least to equip it with the means of extending its knowledge in future years.

With a view to enforce the obligation of attendance in an indirect manner, the Act of 1876 proceeds first to place restrictions on the employment of children until they have complied with certain educational conditions, and in the view of the Act the parent of the child who employs it for the purpose of gain is deemed its employer.(*h*) The fifth section makes it a statutory offence, with a penalty, on conviction, not exceeding 40*s*.,(*i*) on the part of any employer to take into his employment (1) any child who is under ten years of age, and (2) any child over ten years and under fourteen years, who shall not have attained such proficiency in reading, writing, and arithmetic as is afterwards specified in the schedules to the Act,(*k*) unless he is attending school as a "half-timer."(*l*) The Act of 1880 provided further that it would be deemed a contravention of the Act of 1876, and the employer would be liable to a like penalty, if he took into his employment a child of the age of ten years and under the age of thirteen, resident in a school district, before that child had obtained a certificate of having "reached the standard" of education (*i.e.*, of having

(*f*) A "child" under this Act is so called between the age of five and fourteen; 39 & 40 Vict. c. 79, s. 48.
(*g*) 39 & 40 Vict. c. 79, s. 4.
(*h*) *Ibid.*, s. 47.
(*i*) *Ibid.*, s. 6.
(*k*) *Ibid.*, s. 5 (2); Schedule 1.
(*l*) *Ibid.*, s. 5 (2).

passed in reading, writing, or arithmetic, in that or a higher standard(*a*)) fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from the obligation to attend school.(*b*)

Since 1881, the degree of proficiency required is that prescribed in the fourth standard defined by the Code of 1876. But failing this educational qualification for employment, the Act further provides a loop-hole for invincible dulness, by which a child over ten years' old who cannot pass the required standard, and who might, therefore, be kept from labour till the age of fourteen without any educational advantage, may still be qualified for work if it can produce a certificate(*c*) of regular attendance at a "certified efficient school"(*d*) for a certain number of years previous. This qualification for employment(*e*) is now fulfilled by 250 attendances after five years of age, in not more than two schools in each

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(*a*) This is the interpretation put upon the phrase "reached the standard" by the Education Department.—*Code of Regulations* (1891), Art. 30.

(*b*) 43 & 44 Vict. c. 23, s. 2.

(*c*) *i.e.*, a "labour certificate." Any parent or other person interested in the employment or education of any child may apply to the local authority of the district in which the child resides for a labour certificate. The applicant must present to the local authority the evidence of age and proficiency of the child; and the local authority, if they are satisfied that the child is qualified for total or partial exemption from school attendance under the bye-laws of the district, or for employment under Schedule 1 of the Act of 1876, shall furnish the certificate asked for.—*Revised Regulations of Education Department*, 12th April, 1883, Art. 9. The principal teacher shall give certificates of school attendance: *Ibid.*, Arts. 10, 11, 12.

(*d*) A "certified efficient school" is a public elementary school, or a workhouse school certified to be efficient by the Local Government Board, or an elementary school which is not conducted for private profit, and is open at all reasonable times to the inspection of Her Majesty's inspectors, and requires the like attendance from its scholars as is required in a public elementary school, keeps the required registers, and is certified to be efficient by the Education Department: *Ibid.*, s. 48.

(*e*) This is known as the "dunce's pass," the name given to it by Lord Sandon. The Royal Commission on the Elementary Education Acts reported in 1888 that no evidence had been brought before them tending to show that parents had availed themselves to any extent of this provision.—*Report*, p. 31.

year during five years, whether consecutive or not.(*f*) Since the passing of the Act of 1870, it affects those children only who, at the age of thirteen, have failed to pass the standard for total exemption from school attendance, fixed by the bye-laws of the district in which they reside.

From the restriction thus put on a child's employment there are special exemptions provided for all children allowed to go to work under those Factory Acts which demand half-time attendance at school, as well as all who are attending school half-time under the bye-laws of a local authority. At the same time the education of children employed in workshops is withdrawn from the operation of the Workshops Regulation Act, and transferred to that of the Factory Acts. These two Acts have since been consolidated. With children of this class the local authorities have nothing further to do.

The enforcement of these measures of indirect compulsion is committed by the Act of 1876 to "local authorities,"(*g*) namely, to a school board in a district within its jurisdiction, and in other districts to a school attendance committee, appointed annually, if it be a borough, by the council of the borough, and if it be a parish, by the guardians of the union in which such parish is situate,(*g*) or by an urban sanitary authority, in certain cases, in a sanitary district.(*h*) The school attendance committee may consist of not less than six nor more than twelve members; one-third, however, in the case of a committee appointed by the board of guardians, is to consist of *ex officio* guardians, if there are any and sufficient *ex officio* guardians.(*i*) The Act also provides that the school board and the school attendance committee should, as soon as might be, publish the provisions of the Act, within their respective jurisdictions in such manner as they should think best calculated for making the provisions [illegible] (*j*)

(*f*) 39 & 40 V[illegible]
(*g*) *Ibid.*, s. 7.
(*h*) *Ibid.*, [illegible]
(*i*) *Ibid.*, [illegible]

Exceptions are made to these restrictions on the employment of children, if it is proved to the satisfaction of the court having cognisance of the case *either* :—

(1.) That during the employment there is not within *two* miles,(*a*) measured according to the nearest road, from the residence of the child, any public elementary school open which the child can attend,(*b*)

(2.) That the employment, by reason of being during school holidays, or during the hours during which the school is not open, or otherwise, does not interfere with the efficient elementary instruction of the child, and that the child obtains such instruction by regular attendance for full time at a certified efficient school,(*c*) or in some other equally efficient manner,(*d*) *or*

(3.) That the employment is during a period exempted by special notice of the local authority for the necessary operations of husbandry and ingathering of crops, an exemption which may be extended over not more than six weeks in a year. That is to say, the local authority may, if they think fit, issue a notice exempting from the prohibitions and restrictions of this Act the employment of children above the age of eight years, for the necessary operations of husbandry and ingathering of crops for the period to be named in such notice : Provided that the period or periods so named by any such local authority shall not exceed in the whole six weeks between the 1st of January and the 31st of December in any year.(*e*) A copy of this notice must be sent to the Education Department, and to the overseers of every parish within the jurisdiction

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(*a*) *See* note (*g*) at p. 93, *post*.
(*b*) 39 & 40 Vict. c. 79, s. 9 (1).
(*c*) *See* note (*e*), *ante*, p. 84.
(*d*) 39 & 40 Vict. c. 79, s. 9 (2).
(*e*) *Ibid.*, s. 9 (3).

of the committee, for publication in the same way as parochial notices.(*f*) The local authority are also to advertise the notice in any such manner (if any) as they may think fit.(*f*) This notice, if issued at all, must extend to the whole district; but it may be confined to children to be employed in particular districts or in a particular branch of industry.

The uneducated child having thus been prohibited from employment, the Act of 1876 next proceeds to bring him into school by means of what is known as the "Wastrel Clause."(*f*) The two classes of persons affected by it are—first, parents(*g*) who habitually, and without reasonable excuse, neglect to provide efficient elementary instruction for their children, being over five years of age, and prohibited from full time employment;(*h*) and, secondly, children found habitually wandering, or not under proper control, or being in the company of rogues, vagabonds, disorderly persons, or reputed criminals.(*i*) In these cases it is the duty of the local authority after due warning to the parent of the child, to complain to a court of summary jurisdiction, and that court, if satisfied of the truth of the complaint, may issue an "attendance order,"(*k*) requiring the child to attend regularly at some certified efficient school, willing to receive it and named in the order.(*l*) The school is to be such as the parent may select, or if he do not select any, then such public elementary school as the court think expedient.(*l*)

The following reasonable excuses, however, if they can be pleaded, are allowed, namely, that the nearest public

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(*f*) 39 & 40 Vict. c. 79, s. 9.

(*g*) *Ibid.*, s. 11.

(*h*) "Parent" includes "guardian and every person who is liable to maintain, or has the actual custody of any child:" *Ibid.*, s. 48; 33 & 34 Vict. c. 75, s. 3.

(*i*) 39 & 40 Vict. c. 79, s. 11 (1).

(*k*) *Ibid.*, s. 11 (2).

(*l*) An "attendance order," is an order made by the court of summary jurisdiction for the child to attend some certified efficient school: *Ibid.*, s. 11.

elementary school open is not within *two* miles, measured, according to the nearest road, from the child's residence; or that the absence of the child from school has been caused by sickness or any unavoidable cause.(*a*)

In the event of a breach of such an attendance order, for the first offence the court may impose a penalty not exceeding 5*s*., or order the child to be sent to an industrial school,(*b*) according as the parent fails to satisfy, or succeeds in satisfying the court that he has used all reasonable efforts to secure compliance with the order.(*c*)

On the second or any subsequent breach of the order, the court may either order the child to be sent to an industrial school,(*d*) or impose a fine on the parents, or do both in its discretion.(*e*) A fine may be imposed for each breach of the order, provided that complaint be not renewed at any less interval than two weeks.(*e*) A previous "conviction" need not, like any other summary conviction, be proved by formal evidence on a further charge. It is not really a conviction, but merely a penalty imposed as a means of securing compliance with the attendance order; and it has never been the practice to require such strict proof of orders as of convictions. It is, therefore, sufficient that the officer of the school board prove that he heard the decision, and that the clerk of the court produce the minute or note in his book.(*f*)

Children so sent to an industrial school shall be deemed to be sent under the Industrial Schools Act, 1866, and the parent shall be liable to contribute to the maintenance and training of the child as under that statute.(*g*) That is to say, the parent, if of sufficient ability, may be

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(*a*) 39 & 40 Vict. c. 79, s. 11.
(*b*) As to an industrial school, see *post*, p. 99.
(*c*) 39 & 40 Vict. c. 79, s. 12 (1).
(*d*) See "Industrial School," *post*, p. 99.
(*e*) *Ibid.*, s. 12 (2).
(*f*) *London School Board* v. *Harvey* (1879), 4 Q. B. D. 451; 43 J. P. 316. See also *Rex* v. *Hains* (1695), Comb. 887; *Reg.* v. *Newman* (1852), 2 Den. C. C. 390.
(*g*) 39 & 40 Vict. c. 79, s. 12.

ordered to contribute, if the child is sent to a certified industrial school (as distinct from a certified day industrial school), a sum not exceeding 5*s*. per week.(*h*) The order to pay such sum may be made by two justices or a magistrate having jurisdiction at the place where the parent resides; and they or he may subsequently vary the order as circumstances require.(*i*) The Secretary of State may also, in his discretion, remit wholly or partially, any payment so ordered.(*i*)

The local authority are bound to investigate any alleged case of neglect of children's education under section 12 (just considered), and to proceed to enforce the prescribed penalties, unless it be deemed inexpedient to do so.(*k*) A child thus sent to an industrial school may, after one month's residence therein, receive a license to live out of the school (under section 27 of the Industrial Schools Act, 1866), on condition of its attending regularly some certified efficient school willing to receive it.(*l*)

By the Act of 1870, the power of making *bye-laws* for directly compelling attendance at school was limited to districts under school boards.(*m*) The Act of 1876 requires school attendance committees (on the requisition of the parishes concerned) to make bye-laws compelling attendance within their limits,(*n*) thus extending the option of adopting direct compulsion to every school district in England, though it stopped short of a universal system of direct compulsion. The provision that the school attendance committee should make bye-laws only on the requisition of the parishes concerned was repealed by the Act of 1880,(*o*) thus leaving the school attendance committee to make bye-laws on their own motion.(*p*) They cannot, however, make any bye-laws to remit or pay any

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(*h*) 29 & 30 Vict. c. 118, ss. 39, 40.
(*i*) *Ibid.*, s. 40.
(*k*) 39 & 40 Vict. c. 79, s. 13.
(*l*) *Ibid.*, s. 14.
(*m*) 33 & 34 Vict. c. 75, s. 74.
(*n*) 39 & 40 Vict. c. 79, s. 21.
(*o*) 43 & 44 Vict. c. 23, s. 6.
(*p*) *Ibid.*, s. 3.

school fees,(*a*) thus differing from school boards which under the bye-laws can remit (and formerly could pay) school fees.(*b*) It is provided to be the duty of every local authority to enforce all bye-laws made under section 74 of the Act of 1870.(*c*)

The Act of 1880 further provided that in all districts in which such bye-laws were not in force at the passing of that Act,(*d*) bye-laws should *forthwith* be made;(*e*) and it gave power to the Education Department, if it should appear to them that in any school district no bye-laws were in force, either to proceed as if the local authority were in default,(*f*) or to make bye-laws themselves.(*g*) The bye-laws so made should have the like effect, and be enforced, and be subject to revocation and alteration as if they had been made by the local authority and sanctioned by the Department.(*g*) From which it will be observed that the Act of 1880 introduced universal direct compulsory attendance of children at school.

All bye-laws, under whatever Act power is given to make them, are to be enforced by the several bodies empowered to enforce them as if they had been made under section 74 of the Act of 1870.(*h*)

Power was at the same time given to the Education Department to issue regulations with respect to the form of certificates of proficiency and previous attendance at school, subject to the conditions which attaches to the minutes of the Education Department, namely, that they should be previously laid before Parliament.(*i*) Registrars were at the same time required to supply needful information concerning the births and deaths of

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(*a*) 39 & 40 Vict. c. 79, s. 23.
(*b*) 33 & 34 Vict. c. 79, s. 74 (3).
(*c*) *Ibid.*, *ante*, p. 74.
(*d*) *i.e.*, 26th August, 1880.
(*e*) Although the power to make bye-laws was extended under the Acts of 1876 and 1880, the bye-laws are to be made under section 74 of the Act of 1870. See section 21 of the Act of 1876, and section 2 of the Act of 1880.
(*f*) See *ante*, pp. 42, 75.
(*g*) 43 & 44 Vict. c. 23, s. 2.
(*h*) *Cf.*, section 21 of the Act of 1876, and section 2 of the Act of 1880.
(*i*) 39 & 40 Vict. c. 79, s. 24.

children on the requisition of the local authority, at a fee not exceeding twopence for each entry ;(*k*) and certificates of birth of children may be obtained for the purpose of these Acts at a fee not exceeding one shilling for each certificate.(*l*)

The local authority have the right of insisting on the summonses for alleged infringement of bye-laws being served by the police.(*m*) If the summonses are served by the police the local authority, as being the persons at whose instance the process is issued and served, are bound to pay the fees to constables according to the the table settled by justices pursuant to statutory authority.(*m*)

A Home Secretary has advised that it is illegal for a member of a school board to adjudicate on a school board summons, and that even if not illegal, it is certainly inexpedient.

In cases where parents reside in a union extending into different counties, proceedings for non-compliance with attendance orders or for breach of bye-laws, may be taken against them before the justices of either county.(*n*)

The Act of 1870, it will be remembered, takes security for its provisions being duly carried out by school boards, through the power granted to the Education Department to declare a school board in default.(*o*) This power is, by the Acts of 1876 and 1880, extended so as to apply to any failure in a local authority to carry out this latter Act.(*p*) The obligation of observing the bye-laws may be strictly enforced, and the Education Department have thus the fullest powers to secure that the local authorities fulfil their duties.

To assist them in the execution of the Act, school attendance committees may appoint local attendance committees, but cannot extend to them the power

(*k*) 39 & 40 Vict. c. 79, s. 26. (*l*) *Ibid.*, s. 27.
(*m*) *Circular Letter of Home Secretary*, 19th November, 1882.
(*n*) 39 & 40 Vict. c. 79, s. 34 ; 30 & 31 Vict. c. 106, s. [illegible] *Eaton* (1881), 8 Q. B. D. 158.
(*o*) 33 & 34 Vict. c. 75, s. 63. See *ante*, p. 39.
(*p*) 39 & 40 Vict. c. 79, s. 27; 43 & 44 Vict. c. [illegible]

making bye-laws or taking legal proceedings. Such local attendance committees are to consist of not more than three persons, one or more of whom are to be members of the local authority.(*a*) Power is given to the Education Department to authorise the appointment of a separate school attendance committee by an urban sanitary authority; but it must not comprise any borough, and it must be co-extensive with one or more parishes not within the jurisdiction of a school board, the population being not less than 5,000.(*b*)

So much for the statutory provisions. It will be seen that all authority to make bye-laws on this subject is to be traced from the 74th section of the Act of 1870. Special attention should, therefore, be devoted to the language of that section. Here it is only necessary to consider the effect of that section on the making and enforcing of bye-laws as to the attendance of children at school.

In the first place, these bye-laws must not be *ultra vires*. They must deal with such matters as are mentioned in the several sections(*c*) which have been referred to in the preceding pages of this chapter. Thus, *e.g.*, a bye-law would be *ultra vires* were it to prevent a parent from transferring his child from one school to another; to prevent the child of a parent of the "wealthier class" from attending a board school;(*d*) to limit a parent's selection of a public elementary school (according, *e.g.*, to schools having sufficient accommodation); to prescribe the religious instruction to be given in the school; to enable the board to call upon the parent to give his reasons for not sending his child to school; to impose upon the child the duty of studying at home;(*e*)

(*a*) 39 & 40 Vict. c. 79, s. 32.

(*b*) *Ibid.*, s. 33.

(*c*) 33 & 34 Vict. c. 75, s. 74; 39 & 40 Vict. c. 79, s. 21; 43 & 44 Vict. c. 23, s. 2.

(*d*) It does not appear that in 1870 it was contemplated that the children of the wealthier class would seek to attend board schools, but it is now found that numbers do, and there is nothing in the Acts to prevent them: *Report of Commissioners on Elementary Education Acts* (1888), pp. 61, 145.

(*e*) *Hunter* v. *Johnson* (1884), 13 Q. B. D. 227.

or to require the attendance of children outside the prescribed limits of age. The bye-laws must only refer to children "not less than five, nor more than thirteen years" of age,(*f*) thus enabling the authority to prescribe the limits of age. It may be added that since the passing of the Act of 1880 the Education Department make it a condition that the bye-laws shall apply to every child between the ages of five and thirteen.

Non-attendance is excused if reasonable excuses are given. The Act of 1870 gives three instances of reasonable excuses, any one of which is in itself sufficient:—(1) That the child is under efficient instruction in some other manner; (2) That the child has been prevented from attending school by sickness or any unavoidable cause; (3) That there is no public elementary school open which the child can attend within such distance, not exceeding *three* miles, measured according to the nearest road from the residence of the child, as the bye-laws may prescribe.(*g*) But these are not all the reasons that may be given and may be accepted. The Act does not say that they are the reasonable excuses which shall be entertained; but the reasons specified are given partly as illustration, and partly as three reasonable excuses which may very often arise. Where, however, the parent seeks to go outside of and rely upon some other than these excuses, his case will depend upon its own particular circumstances. The case of *The School Attendance Committee of Belper Union* v. *Bailey*(*h*) illustrates this. The bye-laws in question con-

(*f*) 33 & 34 Vict. c. 75, s. 74 (1).

(*g*) 33 & 34 Vict. c. 75, s. 74. It will be noticed that section 74 (3) of the Act of 1870 prescribes a limit of *three* miles for the distance that the bye-laws may prescribe as the limit within which the child should attend school; while section 9 (2) of the Act of 1876 prescribes *two* miles. Note (1) that these sections refer to different matters: section 74 (3) of the Act of 1870 refers to a reasonable excuse as to compulsory attendance, while section 9 (1) of the Act of 1876 to a reasonable excuse for the employment of the child; (2) section 74 (3) refers to an excuse which may be incorporated in a bye-law, and it is open to the local authority to reduce the limit to any smaller distance; while section 9 (1) affords no excuse to the employment of the child if all the elements of that sub-section are not existing at the same time.

(*h*) (1882) 9 Q. B. D. 259.

tained the three reasonable excuses mentioned in the 74th section (*supra*). The parent caused his child to be sent daily from home in time to arrive at school when it opened. He did not receive any notice that the child had not duly attended except on two occasions. On both occasions the child was corrected by the parents. Nevertheless, the child was a truant, and often failed to attend school. The justices found that the parent had done all that could reasonably be expected of him to secure the attendance of the child at school, and had reasonable grounds for believing, and did believe, the child was duly attending school; they, therefore, dismissed the summons. The High Court held that the justices acted rightly. The case of *London School Board* v. *Duggan*(*a*) illustrates the same thing from a different point of view. The parents were industrious and respectable, but very poor. The child in question was twelve years of age, was the eldest of a family consisting of several children, and had received a fair elementary education. She was in respectable employment earning wages, which she gave to her parents. Without the child's earnings it would have been impossible for the parents to have provided adequate food for their other children.(*b*) The High Court held these facts constituted a "reasonable excuse" for non-attendance.

Again, questions often arise as to constructive non-attendance depending upon the non-payment of the school fees. If the prepayment of fees is made a rule, and a child comes to school without his fee, the child may be refused admission, and this would not afford reasonable excuse for the non-attendance of the child, or if the child was admitted, and the fees were not paid, it would also be deemed a case of non-attendance without reasonable excuse. In *Saunders* v. *Richardson*,(*c*) which

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(*a*) (1884) 13 Q. B. D. 176.

(*b*) It will be recollected that it is an offence for a parent not to provide adequate food for their children: 31 & 32 Vict. c. 122, s. 37.

(*c*) (1881) 7 Q. B. D. 388, reversing *Richardson* v. *Saunders* (1881), 6 Q. B. D. 313. The case of *Saunders* v. *Richardson* has been approved in the Court of Appeal; see *London School Board* v. *Wright* (1884), 12 Q. B. D. 578.

was a case decided by a specially constituted court,(*d*) it was in evidence that there was a bye-law requiring prepayment of the school fees. The parent sent the child to school without the fee, and she was refused admission. The parent had not approached the school board to have the fees remitted,(*e*) or the guardians requesting them to pay the school pence ;(*f*) nevertheless, it transpired that he was a poor man, and that he could not provide the necessary fees for the education of the child in the board school. Upon these facts, the court held that he had failed to give a reasonable excuse, and that he was liable to be convicted. A reference to section 12 of the Act will show that the parent must satisfy the court that he has used all "reasonable efforts" to make the child attend school, where an order is made under that section. In *Saunders* v. *Richardson*, an order had been made under that section, and the view the court took was that the parent having failed to apply to the school board to remit the fees, or to the guardians to pay them, had not used all "reasonable efforts."

The case of *London School Board* v. *Wood*(*g*) is very like that of *Saunders* v. *Richardson* (*supra*). The only difference is that the parent was able to pay the school fee, but did not pay, and the child was not excluded from the school by reason of the non-payment, but was admitted and received instruction. But these points do not distinguish it in principle from *Saunders* v. *Richardson*, and the court held that there had been no effective attendance within the meaning of the statute. The parent had not "performed the condition precedent to an effective attendance of paying the school fees."(*h*)

(*d*) *Coram* Lord COLERIDGE, C.J., DENMAN, J., POLLOCK, B., MANISTY, and WATKIN WILLIAMS, JJ.

(*e*) Which he might have done under section 17 of the Act of 1870.

(*f*) Which he might have done under section 10 of the Act of 1870.

(*g*) (1885) 15 Q. B. D. 415.

(*h*) Lord COLERIDGE, at 15 Q. B. D., p. 418 ; *cf.* DENMAN, J. (*ibid*, p. 419), who observes : "I do not say that the act of the master in admitting the child to the school without payment of the fees might not in some possible cases afford a reasonable excuse to the parent, as, for instance, if the master told the parent, 'You may pay the fees when the child has attended school twenty times.'"

Additional instances of what does not constitute reasonable excuse are the plea of "no boots," and the sickness of the father or mother, and similar pleas.(*a*)

Considerable difficulty was at one time experienced as to the meaning and effect of "full time employment" in section 11 (1) of the Act of 1876, and as to whether it was intended to extend the provision to children between thirteen and fourteen years of age. That section deals with two classes of children—the respectable child and the vagabond child. About the vagabond child there was no doubt; but as to the respectable child between thirteen and fourteen, was he to be dealt with under the section? The matter was further complicated by what subsequently turned out to be a wrong decision on the section.(*b*) Section 5 of the Act of 1876 prevents the employment of children under ten, and of children of ten and upwards (a child in that Act being from five to fourteen(*c*)), who have not obtained a labour certificate; and then section 11 (1) of the same Act makes the parent send to school his "child above the age of five years who is under this Act (*i.e.*, the Act of 1876) prohibited from being taken into *full time* employment." It has now been settled that the words just quoted apply to children who by section 5 are prohibited from being employed at all, or who can only be partially employed.(*d*)

Difficulty has also been experienced as to who should be summoned for this default, or, in other words, who is the "parent?" "Parent" is defined so as to "include

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(*a*) With reference to the attendance at elementary schools of children who live in houses where infectious diseases are prevailing, and in the case of any school which is closed on the advice of the sanitary or medical authorities of a district on account of the existence of epidemic disease, the Education Department accepts a number of meetings and attendances reduced in proportion to the period for which the school is closed.

(*b*) *Saunders* v. *Crawford* (1882), 9 Q. B. D. 612, which was reversed by *Winyard* v. *Toogood* (1882), 10 Q. B. D. 218.

(*c*) 39 & 40 Vict. c. 79, s. 48.

(*d*) *Winyard* v. *Toogood* and *Hance* v. *Fortnum* (1882), 10 Q. B. D. 218. These cases like the case of *Saunders* v. *Richardson* (*supra*) was argued before a specially constituted court consisting of Lord COLERIDGE, C.J., FIELD, HAWKINS, STEPHEN, and WATKIN WILLIAMS, JJ.

guardian and every person who is liable to maintain or has the actual custody of any child."(*e*) So that "parent" includes "the father and grandfather, and the mother and grandmother" of any child,(*f*) and applies to the parent of an illegitimate child. It should be borne in mind that as the object of the Acts is that children should be educated, parents are the first persons on whom the obligation rests. Although, therefore, guardians of children, persons liable to maintain them, and persons who have the actual custody of them, may be called upon to fulfil the obligation, this does not necessarily discharge the obligation or exclude the liability of the "parent," in the primary and obvious sense of that term, where there is a person who comes under that description.(*g*) That appears to be the rule established by the following authorities: Mrs. Jackson was a widow, and very poor. She was quite unable to maintain her daughter, who was between thirteen and fourteen years of age, and had sent her to her aunt, who "had kindly taken her in." It was also stated that the child went sometimes to stay with another aunt. The child was not sent to school, and the mother was summoned for unlawfully neglecting without reasonable excuse to comply with an order requiring her to cause her child to attend the board school. The magistrate dismissed the case upon the ground that it was not proved that the child was residing with and under the control of the mother: he considered the person who had the actual custody of the child was alone liable to conviction for not sending the child to school. The court, for the reasons given above, ruled that the magistrate was wrong, and the mother ought to have been convicted.(*h*) Again, the father was absent at sea in pursuit of his lawful calling. His child under the age was

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(*e*) 33 & 34 Vict. c. 75, s. 3.

(*f*) 43 Eliz. c. 3, s. 6.

(*g*) A test question is, in whom is the permanent custody of the child vested; or with whom does the child continually reside? Such person would be the "parent" under the Act, even although the father or mother were alive at the time: *Cf.* POLLOCK, B., in *School Board for London* v. *Jackson* (1881), 7 Q. B. D., at p. 504.

(*h*) *School Board for London* v. *Jackson* (1881), 7 Q. B. D. 502.

living with her mother, his wife, and was under her control. The child was not sent to school, and the mother was summoned. The justices thought the father was the person liable and dismissed the summons against the mother. The court held that in the absence of the husband, whether by desertion or in pursuit of his calling, it might be for years or months, the mother having the care or custody of the child was liable.(*a*)

CHAPTER X.

THE VOLUNTARY SCHOOL.

THE voluntary school may be described as a public elementary school not under the control of the school board. In all other respects it must conform to the requirements of a board school, that is to say, the provisions in the Elementary Education Acts relating to public elementary schools apply to the voluntary school equally as they do to the board school.

The managers of voluntary schools may transfer their schools to school boards, and school boards are empowered in certain cases to re-transfer them to the managers of voluntary schools.(*b*) This part of the subject has already been considered (*ante*, pp. 43 *et seq.*). The powers which managers have of purchasing lands and buildings for the purposes of their schools(*c*) have also been considered (*ante*, pp. 61 *et seq.*). The managers must publish a statement of their accounts immediately on receipt of the annual report of Her Majesty's inspector, and allow the report to be open to inspection.(*d*)

Where the managers of a voluntary school (*i.e.*, a public elementary school not provided by a school board)

(*a*) *Hance* v. *Burnett* (1880), 45 J.P. 54. See also *Hance* v. *Fairhurst* (1882), 51 L. J. M. C. 139; 47 J. P. 53.

(*b*) 33 & 34 Vict. c. 75, s. 23.

(*c*) *Ibid.*, s. 21.

(*d*) *Code of Regulations* (1891), Art. 89.

desire to have their school inspected or the scholars examined, as well in respect of religious as of other subjects, by an inspector other than one of Her Majesty's inspectors, such managers may fix a day or days *not exceeding two* in any one year for such inspection or examination.(*e*) The managers must, not less than fourteen days before any day so fixed, cause public notice of the day to be given in the school, and notice in writing of such day to be conspicuously affixed in the school.(*e*) On any such day any religious observance may be practised, and any instruction in religious subjects given at any time during the meeting of the school.(*e*) If a scholar has been withdrawn by his parent(*f*) from school attendance previously during the time when any religious observance has been practised or instruction in religion has been given,(*g*) he shall not be required to attend the school on any such day,(*h*) but all other scholars must attend.

No parliamentary grant in aid of building, enlarging, improving or fitting up an elementary school is now made.(*i*)

The subjects of parliamentary grant and fee grant, in their application to voluntary as well as board schools, are considered in a subsequent page.

CHAPTER XI.

THE INDUSTRIAL SCHOOL.

THERE are two classes of industrial schools referred to in the Elementary Education Acts. There is the certified industrial School of the Industrial Schools Act, 1866,(*k*)

(*e*) 33 & 34 Vict. c. 75, s. 76.

(*f*) "Parent" includes guardian and every person who is liable to maintain or has the actual custody of the child: *Ibid.*, s. 3.

(*g*) *Ibid.*, s. 7 (2).

(*h*) *Ibid.*, s. 76.

(*i*) *Ibid.*, s. 96.

(*k*) 29 & 30 Vict. c. 118.

and there is also the day industrial school, which was established for the first time under the Act of 1876, as a result of the experiments made by Miss Carpenter at Bristol.

A certified industrial school and a certified day industrial school are deemed to be efficient schools.(*a*)

A school board may, with the consent of the *Education Department*, establish, build, and maintain a certified *industrial* school (as distinct from a certified *day industrial* school) within the meaning of the Industrial Schools Act, 1866.(*b*) For that purpose they have the same powers as they have for the purpose of providing sufficient school accommodation for their district.(*c*) The school board, however, so far as regards such industrial school, shall be subject to the jurisdiction of the Secretary of State in the same manner as the managers of any other industrial school are subject, and such school shall be subject to the provisions of the Industrial Schools Act, 1866, and not of the Elementary Education Act, 1870.(*d*)

By the Industrial Schools Act, 1866, an *industrial* school is defined as "a school in which industrial training is provided, and in which children are lodged, clothed, and fed as well as taught."(*e*) The managers are defined as "the persons for the time being having the management or control of such a school."(*e*)

A school board may from time to time contribute sums of money towards the alteration, enlargement, or rebuilding of a certified *industrial* or *day industrial* school, or towards the support of the inmates or of the management of such a school.(*f*)

The body appointing a school attendance committee (*i.e.*, the council, guardians, or sanitary authority, as the case may be) have (on the recommendation of the committee) the like power of contributing towards the maintenance of a child in an *industrial* school or in a *day in-*

(*a*) 39 & 40 Vict. c. 79, s. 16.

(*b*) 33 & 34 Vict. c. 75, s. 28.

(*c*) *Ibid.* For these powers see *ante*, p. 61, and sections 19, 20, and 22 of the Act of 1870.

(*d*) 33 & 34 Vict. c. 75, s. 28.

(*e*) 29 & 30 Vict. c. 118, s. 5.

(*f*) 33 & 34 Vict. c. 75, s. 27; 29 & 30 Vict. c. 118, s. 12; 39 & 40 *Vict. c. 79, ss. 15, 16.*

dustrial school, where the child has been sent there by the school attendance committee, as a school board.(*g*) In the case of a committee appointed by the guardians, the consent of the Local Government Board is required to such contribution.(*h*) The expenses of these contributions are paid in like manner as the expenses of the school attendance committee(*i*) are paid.(*k*)

A school board may also *contribute*(*f*) towards or *undertake*(*l*) the establishment or building of the school, or *contribute* towards,(*f*) or *undertake*(*l*) the purchase of land required either for the use of an existing certified *industrial* school, or for the site of a school intended to be a certified industrial school.(*f*) The consent required for all or any of these purposes is the consent of the Home Secretary(*m*) Where the school board are about to exercise these powers, not less than fourteen days' previous notice shall be given of their intention to take into consideration the doing of any of these acts.(*n*) The school board are also empowered to borrow money under the Public Works Loans Act, 1875,(*o*) for the purpose of establishing, building, or maintaining a certified *industrial* school or certified *day industrial* school, and to spread the re-payment over a period of years not exceeding fifty in the same way as they may borrow for the enlarging or providing of an ordinary school-house,(*p*) with this exception, that it is the consent of the Home Secretary that is required instead of the consent of the Education Department.(*q*)

The school board have the same power to borrow and to spread the payment of money borrowed over a number of years, with the like consent of the Home Secretary,

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(*g*) 42 & 43 Vict. c. 48, s. 4.
(*h*) *Ibid.*; 39 & 40 Vict. c. 79, s. 31.
(*i*) 42 & 43 Vict. c. 48, s. 4.
(*k*) This is explained at p. 76, *ante*.
(*l*) 42 & 43 Vict. c. 48, s. 2. See also 33 & 34 Vict. c. 75, s. 28; 36 & 37 Vict. c. 86, s. 10; 39 & 40 Vict. c. 79, s. 15; 35 & 36 Vict. c. 21, ss. 8, 9.
(*m*) 42 & 43 Vict. c. 48, s. 2. See 33 & 34 Vict. c. 75, s. 28; 36 & 37 Vict. c. 86, s. 10; 39 & 40 Vict. c. 79, s. 15.
(*n*) 36 & 37 Vict. c. 86, s. 14; 42 & 43 Vict. c. 48, ss. 2, 3.
(*o*) 38 & 39 Vict. c. 89.
(*p*) 39 & 40 Vict. c. 79, s. 15; 36 & 37 Vict. c. 86, s. 10.
(*q*) *39 & 40 Vict. c. 79, s. 15.*

where they resolve to contribute any sum of money towards or to undertake the cost of the alteration, enlargement, or rebuilding, or the establishment or building, of a school intended to be a certified *industrial* school or a certified *day industrial* school; also towards the purchase of land required either for the use of such a school or for the site of such a school.(*a*) These powers, however, do not apply in the case of *furnishing* a school whether already existing or about to be built.(*a*)

A *day industrial* school is "a school in which industrial training, elementary education, and one or more meals a day, but not lodging, are provided for the children."(*b*) The persons for the time being having the management or control of such a school are deemed the managers of it.(*b*) A *day industrial* school may be established by order of a Secretary of State, if he deems it necessary for the proper training and control of the children of any class of the population, in the same manner as under the Industrial Schools Act, 1866.(*c*) The prison authority and the school board have the same powers over it as they have over a certified *industrial* school,(*d*) and a sum not exceeding 1*s*. a week may be contributed out of the parliamentary vote towards the cost of each child committed to it,(*e*) as *infra*. Parents of children, or the guardians of the poor on their behalf (if the parent be unable to pay), shall be liable to contribute towards the cost a sum not exceeding 2*s*. a week for children committed by order to a certified industrial school;(*f*) and children may be received without an

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(*a*) 42 & 43 Vict. c. 48, s. 3.

(*b*) 39 & 40 Vict. c. 79, s. 16: *Day Industrial Schools Order*, 20th March, 1877, Art. 2. Premises occupied as a school, the managers of which have received a certificate under the Industrial Schools Act, 1866, constituting it a "certified industrial school," are liable to be rated to the poor: *Reg.* v. *Overseers of West Derby* (1875), L. R. 10 Q. B. 283.

(*c*) 39 & 40 Vict. c. 79, s. 16.

(*d*) *Ibid.*, s. 16 (1).

(*e*) *Ibid.*, s. 16 (2).

(*f*) *Ibid.*, s. 16 (3).

order at the joint request of the local authority(*g*) and the parent, on the latter undertaking to pay not less than 1s. a week, to supplement which the Secretary of State may order a contribution of not more than 6*d.* a week out of the parliamentary vote.(*h*)

The Queen, by Order in Council, is further empowered to apply to a certified *day industrial* school the provisions of the Industrial Schools Act, or such modifications of the same as are found to be necessary or proper for the purposes of the Act of 1876, and may modify or mitigate the penalties of the former Act.(*i*) Such Order may provide that a child may be punished for an offence by being sent to such a school instead of to a reformatory school.(*i*) A Secretary of State may make and alter the forms of orders for sending children to a day industrial school.(*i*) He may also withdraw the certificate from such a school, if the school becomes unnecessary, on laying his reasons before Parliament within a month.(*i*) The contribution out of the parliamentary vote to a certified day industrial school is made conditional on an examination being annually made of the children, according to the standards recognised by the Education Department in public elementary schools.(*k*) All conditions recommended by a Secretary of State for the purposes of contributions to a day industrial school are to be laid before Parliament in the same manner as minutes of the Education Department relating to the annual parliamentary grant;(*k*) that is to say, they shall not be deemed to be in force until they have lain a month on the table of both Houses.(*l*)

The main object for which local authorities may use the industrial school is to secure the education of the wastrel child. School board officers, or school attend-

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(*g*) *i.e.*, the school board or school attendance committee: 39 & 40 Vict. c. 79, s. 7.
(*h*) *Ibid.*, s. 16 (4).
(*i*) *Ibid.*, s. 16.
(*k*) *Ibid.*, s. 17.
(*l*) 33 & 34 Vict. c. 75, s. 97.

ance officers,(*a*) are, therefore, to bring children who are *liable*, under the Industrial Schools Act, 1866, to be sent to a certified *industrial* school, before two justices, in order to their being so sent.(*b*)

Such proceedings, however, on the part of the officers can only be taken under the direction of not less than two members of a school board or school attendance committee.(*c*)

The class of children who are thus liable to be sent to an *industrial* school comprises—

(1.) Any child apparently under the age of *fourteen* found begging or receiving alms (whether actually or under the pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms.(*d*)

(2.) Any child of like age found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence.(*d*)

(3.) Any child of like age found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment.(*d*)

(4.) Any child of like age frequenting the company of reputed thieves.(*d*)

(5.) Any child of like age lodging, living, or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution.(*e*)

(6.) Any child of like age frequenting the company of prostitutes.(*e*)

(*a*) It is not the duty of the clerk of the guardians, *as such*, to conduct prosecutions for offences under the Elementary Education Acts, or any bye-law thereunder.

(*b*) 33 & 34 Vict. c. 75, s. 36.

(*c*) 39 & 40 Vict. c. 79, s. 38.

(*d*) 29 & 30 Vict. c. 118, s. 14.

(*e*) 43 & 44 Vict. c. 15, s. 1.

(7.) Any child apparently under the age of *twelve* charged before two justices or a magistrate with an offence punishable by imprisonment or a less punishment, but who has not been convicted of felony.(*f*)

(8.) Any child apparently under the age of *fourteen* whose parent or step-parent or guardian represents to two justices or a magistrate that he is unable to control him, and that he desires that the child should be sent to an industrial school.(*g*)

(9.) Any child apparently under the age of *fourteen* maintained in a workhouse or pauper school, whom the board of guardians or board of management of the pauper school represent to two justices or a magistrate to be refractory, or to be the child of parents either of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment.(*h*)

(10.) Any child under the age of *fourteen* of a woman convicted of crime, against whom a previous conviction is proved, who has the child under her care and control at the time of her conviction for the last of her crimes, the child having no visible means of subsistence, *or* being without proper guardianship.(*i*)

(11.) Any child mentioned in an "attendance order," who does not obey such order, if there is no suitable *day industrial* school which the child can attend.(*k*)

The expenses incurred by a school board officer in causing such children to be sent to an industrial school may be paid out of the school fund.(*l*)

When a child is sent to a certified *industrial* school upon the complaint of a local authority, the managers of

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(*f*) 29 & 30 Vict. c. 118, s. 15.
(*g*) *Ibid.*, s. 16.
(*h*) *Ibid.*, s. 17.
(*i*) 34 & 35 Vict. c. 112, s. 14.
(*k*) 39 & 40 Vict. c. 79, s. 12.
(*l*) 33 & 34 Vict. c. 75, s. 36.

the school may grant a license permitting the child at the expiration of one month after the child is sent to the school to live out of the school, on the condition that he attends as a day scholar some certified efficient school in such regular manner as is specified in the license.(*a*) If such a child attends a *day industrial* school, he shall be subject in all respects to a child attending such a school without an order of court.(*b*) The attendance of a child while thus on "license" is supervised by a special officer, attached to the staff of the industrial school, instead of by the ordinary attendance officer.

The children who may be sent to a *day industrial* school are (1) those who may be so ordered for failing to comply with an "attendance order,"(*c*) *i.e.*, failing, &c., to comply with an order by a court of summary jurisdiction to attend a certified efficient school;(*d*) and (2) any of the class of children who may be sent (as above) to an *industrial* school.(*e*) Children sent to a *day industrial* school may be detained there during such hours as may be authorised by the rules of the school approved by the Secretary of State.(*e*)

CHAPTER XII.

LEGAL PROCEEDINGS.

No action to recover arrears of fees for tuition can be maintained by a school board (or the managers of a public elementary school) against the parent of a child attending a public elementary school.(*f*) The reason for this rule is, that inasmuch as it is compulsory upon the parent to cause his child to attend a school, his act in sending the child to school is not voluntary, and no

(*a*) 39 & 40 Vict. c. 79, s. 14.
(*b*) *Day Industrial Schools Order*, 20th March, 1877, Art. 17.
(*c*) 39 & 40 Vict. c. 79, s. 12.
(*d*) *Ibid.*, s. 11.
(*e*) *Ibid.*, s. 16.
(*f*) *London School Board* v. *Wright* (1884), 12 Q. B. D. 578.

promise to pay the fees can be implied.(*g*) Furthermore, the Elementary Education Acts contemplate that the remedy to enforce payment of fees shall be by an attendance order(*h*) obtained in summary proceedings before justices,(*h*) and not by action.

Members of school boards need incur no pecuniary responsibility in respect of the execution of their powers; for it is provided that they may "apply any money in their hands for the purpose of indemnifying themselves against any law costs or damages which they may incur in, or in consequence of, the execution of the powers granted to them."(*i*) Such responsibility, however, will not attach if they act *ultra vires;* that is, beyond their statutory powers. Any servant who obeys any orders or directions of the board, which are *ultra vires*, is liable. Thus, a teacher, in compliance with the directions of his board, set the children attending his school "home lessons," that is, scholastic work, to be done at their respective homes out of school hours. The Elementary Education Acts do not authorise the setting of lessons to be prepared at home by children attending school. The board's directions, therefore, to the teachers were *ultra vires*. The mother (and guardian) of a child attending this school objected to her child doing home work, and gave notice of this to the teacher. The child did not do the home lessons prescribed; he was, therefore, kept in by the teacher for three-quarters of an hour after school hours, and made to learn the lessons. It was held that this detention was unlawful, and rendered the teacher liable to be convicted of an assault.(*k*)

In all legal proceedings a school board may appear by their clerk, or by some member of the board authorised by a resolution of the board.(*l*) Such resolution must appear upon the minutes of the proceedings of the board, but it shall, until the contrary is proved, be deemed in any legal proceeding to appear upon such minutes.(*l*)

(*g*) *London School Board* v. *Wright* (1884), 12 Q. B. D. 578.
(*h*) See 39 & 40 Vict. c. 79, s. 11.
(*i*) 33 & 34 Vict. c. 75, s. 30 (5).
(*k*) *Hunter* v. *Johnson* (1884), 13 Q. B. D. 225.
(*l*) 33 & 34 Vict. c. 75, s. 85.

Certificates, notices, requisitions, orders, and other documents may be served on a school board by serving the same on their clerk, or by sending the same to, or delivering the same at, the office of the board.(*a*) In the case of a public elementary school, not under a school board, the managers of such school, or the persons mentioned in the trust creating the school, will appear in such proceedings.

By its constitution, the school board is a body corporate with a perpetual succession and a common seal.(*b*) The rule with regard to contracts of a body corporate being under seal has been clearly and succinctly laid down by Lord COLERIDGE, C.J.:(*c*) "The rule of law is clear that, *primâ facie* and for general purposes, a corporation can only contract under seal; for the proper legal mode of authenticating the act of a corporation is by means of its seal. On this rule, however, certain exceptions have been engrafted. The principle that governs these exceptions is conveniently stated in *Church* v. *Imperial Gaslight Company*(*d*) by the Court of Queen's Bench, which statement is adopted by the Court of Exchequer in the case of *The Mayor of Ludlow* v. *Charlton.*(*e*) It is there stated that 'wherever to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corporation was created, the exception has prevailed—hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring or too insignificant to be worth the trouble of affixing the common seal are established exceptions.'" The above is the general rule applicable to contracts of corporations under seal, and if there were not other provisions in the Elementary Education Acts modifying its application, the rule would be strictly applicable to school boards.

It cannot, however, be overlooked that the school

(*a*) 33 & 34 Vict. c. 75, s. 82.

(*b*) *Ibid.*, c. 75, s. 30 (1).

(*c*) In *Austin* v. *Guardians of Bethnal Green* (1874), L. R. 9 C. P. 94; 43 L. J. C. P. 100.

(*d*) (1837) 6 A. & E. 846.

(*e*) (1840) 6 M. & W. 815.

board is a representative body, intended to provide at meetings of its members for the conduct of the affairs of the board, and to have the proceedings at such meetings duly recorded by minutes. These minutes are made receivable in evidence in all legal proceedings without further proof.(*f*) The purpose intended to be served, therefore, by requiring the seal of a corporate body to be used is thus secured by other means, namely, by a record of the matter in question in the minutes. If these means are adopted the contract made will be a valid contract, though not made under seal. The case of *Scott* v. *Clifton School Board*(*g*) is the nearest authority on the subject. In that case the plaintiff was an architect, and sued the school board for his fees. His contract was not under seal, but the orders given to the plaintiff were agreed to by resolution of the board, and were duly recorded in the minutes. The work he had done was clearly for a purpose incidental to the performance of the duties of the board, and its necessity was shown by the circumstance that the board, with full knowledge of the terms of the contract and of all the facts, had acted upon it, and taken the benefit of the work. Further, "the appointment of any officer of the board may be made by a minute of the board, signed by the chairman and countersigned by the clerk (if any) of the board, and any appointment so made shall be as valid as if it were made under the seal of the board."(*h*) The plaintiff was duly appointed architect to the board under a minute signed by the chairman of the board, and communicated to the plaintiff by the clerk of the board, and the subsequent orders for the execution of the work were given by minutes of the board properly signed and communicated in a similar manner. It was held that upon the above twofold aspect of the facts the plaintiff was entitled to recover.

All proceedings which may be taken, and all offences and penalties (whether under the Elementary Education Acts or bye-laws) which may be prosecuted or recovered

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(*f*) 33 & 34 Vict. c. 75, s. 30 (4).
(*g*) (1884) 14 Q. B. D. 500.
(*h*) 33 & 34 Vict. c. 75, s. 30 (6), Sched. III., r. 7.

on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.(*a*) The court of summary jurisdiction, when hearing and determining an information or a complaint, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.(*b*) In cases where the offender resides in a union extending into different counties proceedings may be taken before the justices of either county.(*c*)

The proceedings taken before a court of summary jurisdiction are guided by the following regulations:—

(1.) In any proceeding for an offence under a bye-law, the court may, instead of inflicting a penalty, make an order directing the child to attend school, and that if he fail to do so, the person against whom such order is made shall pay a penalty not exceeding the penalty to which he is liable for failing to comply with the bye-law.(*d*)

(2.) Any justice may require by summons any parent(*e*) or employer of a child, required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the court, to comply with such summons, shall be liable to a penalty not exceeding 20*s*.(*f*)

(*a*) 33 & 34 Vict. c. 75, s. 92; 36 & 37 Vict. c. 86, s. 23; 39 & 40 Vict. c. 79, ss. 37, 50; 43 & 44 Vict. c. 23, s. 4; *Day Industrial Schools Order*, 20th March, 1877, Art. 39.

(*b*) 36 & 37 Vict. c. 86, s. 23; 39 & 40 Vict. c. 79, s. 37.

(*c*) 39 & 40 Vict. c. 79, s. 34; 30 & 31 Vict. c. 106, s. 27; *Reg.* v. *Eaton* (1881), 8 Q. B. D. 158.

(*d*) 36 & 37 Vict. c. 86, s. 24 (3). For the penalty for failing to comply with a bye-law, see 33 & 34 Vict. c. 75, s. 74.

(*e*) 33 & 34 Vict. c. 75, s. 3.

(*f*) 36 & 37 Vict. c. 86, s. 24 (4).

(3.) A certificate(*g*) purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or stating the particulars of the attendance of the child at such school, or stating that the child has been certified by one of Her Majesty's inspectors to have reached a particular standard of education, shall be evidence of the facts stated in such certificate.(*h*)

(4.) Where a child is *apparently* of the age alleged for the purposes of the proceeding, it shall lie on the defendant to prove that the child is not of such age.(*i*)

(5.) If the child is attending an elementary school which is not a public elementary school it shall lie on the defendant to show that the school is efficient.(*k*) The court, in considering whether any elementary school is efficient, shall have regard to the age of the child and to the standard of education corresponding to such age prescribed by the minutes of the Education Department for the time being in force with respect to the parliamentary grant.(*k*)

(6.) Where a school board are, by reason of the default of the managers or proprietors of an elementary school, unable to ascertain whether a child who is resident within the district of the board and attends that school, attends school in conformity with a bye-law made by the board, it shall lie on the defendant to show that the child has

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(*g*) As to the offence of forging or counterfeiting a certificate, or giving a false certificate, or knowingly using a forged or false certificate, see 36 & 37 Vict. c. 86, s. 25, *infra*.

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(*k*) 36 & 37 Vict. c. 86, s. 24 (7).

attended school in conformity with the bye-law.(*a*)

(7.) Any person may appear by any member of his family or any other person authorised by him in this behalf.(*b*)

(8.) No legal proceedings for non-attendance or irregular attendance shall be commenced in a court of summary jurisdiction by any person appointed to carry out the compulsory bye-laws of a school board or local authority except by the direction of not less than two members of a school board or school attendance committee.(*c*)

(9.) Proceedings may, in the discretion of the local authority or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act or neglect or default alleged as contravening the bye-law constitutes *habitual* neglect to provide efficient elementary education within the meaning of section 11 of the Act of 1876.(*d*)

(10.) A member of a school board should not adjudicate on a summons taken out at the instance of the board of which he is a member, or in which the board is interested.

Where the offence of illegally taking a child into employment is in fact committed by an agent or a work-

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(*a*) 36 & 37 Vict. c. 86, s. 24 (8).

(*b*) *Ibid.*, s. 24 (9). See also *Reg.* v. *Assessment Committee of St. Mary Abbott's, Kensington* (1891), 1 Q. B. 378.

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man of the employer, such agent or workman shall be liable to a penalty as if he were the employer.(*e*) In such a case the employer will not be liable, if the agent or workman acted without the employer's knowledge or consent. Nor will he be liable if he has used all due diligence to observe the provisions of the Act.(*e*) If he employed the child on the production of a forged or false certificate and under a belief in good faith in the genuineness and truth of such certificate; or if he employed the child on the representation by the parent that the child was of the legal age, which in good faith he believed, then, likewise, he will be exempt from any penalty.(*e*) The employer, indeed, should only accept the representation as to age from some responsible person, such as the parent; and if he should dispense with this, he will be then acting at his own peril.

Again, if the child is illegally taken into employment in consequence of the production by or with the privity of the parent of a false or forged certificate, or on the false representation of his parent(*f*) that the child is of an age at which such employment is not illegal, the parent shall be liable to a penalty not exceeding 40*s*.(*e*) No penalty attaches to the child who falsely represents his age.

If the employer satisfies the local authority, inspector, or other person about to institute a prosecution, that he is exempt by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against and convicting such agent, workman, or parent, the proceedings must then be instituted against the agent, workman, or parent (as the case may be), and not against the employer.(*e*)

A parent of a child who employs the child in any labour exercised by way of trade or for the purposes of gain is regarded as the employer of that child.(*g*)

(*e*) 39 & 40 Vict. c. 79, s. 39. Of course this would exempt an agent or workman too.

(*f*) Parent includes "guardian and every person who is liable to maintain or has the actual custody of any child": 33 & 34 Vict. c. 75, s. 3.

(*g*) 39 & 40 Vict. c. 79, s. 47.

The provisions with regard to the forgery of certificates and giving false information are stringent. Every person who forges or counterfeits any certificate which is evidence of any matter relating to the Elementary Education Acts; or gives or signs any such certificate which is, to his knowledge, false in any particular; or knowing any such certificate to be forged, counterfeit, or false, makes use thereof, is liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour.(*a*) Again, every person who fraudulently obtains or enables or procures any other person to obtain from any school board or local authority payment or remission of payment, or an order for payment or remission of payment of any school fees is liable, on summary conviction, to imprisonment for a period not exceeding fourteen days.(*b*) The penalty on any returning officer, clerk, or other person engaged in the election for wilfully making or causing to be made an incorrect return is a sum not exceeding 50*l.*(*c*) The penalty for obstructing an election or wilfully contravening a regulation is a sum not exceeding 50*l.*(*d*) The penalty on a person guilty of corrupt practices at an election is a sum not exceeding 2*l.* and franchise disqualification for six years.(*e*) The penalty on an overseer or other officer refusing inspection of rate books or failing to assist a returning officer is a sum not exceeding 5*l.* for every day during which he so refuses or fails.(*f*) The penalty on any person hindering a ratepayer from inspecting or taking copies of or extracts from any book or document of the school board or demanding a fee for allowing him to do so is, on summary conviction, a sum not exceeding 5*l.*(*g*)

Further, as to the documents to be received in evidence. Minutes of school board meetings, if signed by

(*a*) 36 & 37 Vict. c. 86, s. 25.
(*b*) 39 & 40 Vict. c. 79, s. 37.
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(*d*) *Ibid.*, s. 90.
(*e*) *Ibid.*, s. 91.
(*f*) 36 & 37 Vict. c. 86, s. 7.
(*g*) 33 & 34 Vict. c. 75, s. 87.

the person purporting to be chairman of the board, either at the meeting of the board of which the minute is made or at the next ensuing meeting, is receivable in evidence in all legal proceedings without further proof.(*h*) The facts that the meeting has been duly convened and held and that all the members are duly qualified to act are established by the production of the minute of the meeting and remain established until the contrary is proved.(*h*)

All orders, minutes, certificates, notices, requisitions, and documents of the Education Department, if purporting to be signed by some secretary or assistant secretary of the Department are, until the contrary is proved, to be deemed to have been so signed and to have been made by the Department, and may be proved by the production of a copy thereof purporting to have been so signed.(*i*) For this purpose the provisions of the Documentary Evidence Act, 1868,(*k*) are to apply.(*l*)

(*h*) 33 & 34 Vict. c. 75, s. 31 (4).
(*i*) *Ibid.*, s. 83.
(*k*) 31 & 32 Vict. c. 37.
(*l*) 33 & 34 Vict. c. 75, s. 83; 39 & 40 Vict. c. 79, s. 45. See also Documentary Evidence Act, 1882 (45 Vict. c. 9), which makes documents printed under the superintendence of the Stationery Office receivable in evidence.

PART III.

FINANCIAL.

CHAP. I.

INCOME.

THE sources of income of school boards consist mainly of school fees, school rate, parliamentary grant, fee grant, and, in some cases, endowment. The sources of income of managers of voluntary schools consist mainly of school fees, subscriptions, parliamentary grant, fee grant, and, in some cases, endowment.

With respect to school boards, the Act of 1870 directs the formation of a school fund as the source of income of a school board.(*a*) To this fund are to be carried all moneys received as fees from scholars or out of moneys provided by Parliament, or raised by way of loan, or in any manner whatever received by the board.(*a*) Any sum required to meet the deficiency of the school fund is to be paid by the rating authority out of the local rate.(*b*) No loan can be raised for the purpose of meeting current expenses.(*c*) The school board serve their precept on the rating authority(*d*) requiring them to pay the amount specified in the precept to the treasurer of the board out of the local rate.(*e*) If the rating authority have no moneys in their hands in respect of the local rate, they are to levy a rate.(*e*) The local authority may

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(*a*) 33 & 34 Vict. c. 75, s. 53.

(*b*) *Ibid.*, ss. 53, 54.

(*c*) *Reg.* v. *Reed* (1880), 5 Q. B. D. 483, in Court of Appeal, reversing the decision of the court below, 4 Q. B. D. 477.

(*d*) The "rating authority" is the authority in regard to each district specified in the fourth column of Schedule I. to the Act of 1870.

(*e*) 33 & 34 Vict. c. 75, s. 54.

levy a separate rate in order to meet the precept of the school board; or they may raise the requisite amount by an addition to any rate they may make; that is to say, they may raise by means of the local rate a larger sum than they would require but for the demand of the school fund. If the overseers levy a separate rate, no allowance or publication of such rate appears to be necessary. If they levy one rate for school and other poor law purposes, it should be specified in the demand note how much in the pound is for poor rate and how much for school rate in respect of each person rated, but the separate amounts should not be distinguished in the rate itself. When the local authority wish to raise the question whether the amount specified in the precept is properly and legally required by the school board, it is a very inconvenient mode to raise the objection by refusing to pay the amount specified; and there is, indeed, some doubt whether the local authority can ever really raise the question in this way.(*f*) The more feasible course seems to be to raise the question on the audit of accounts.(*f*) In every case there should be a formal demand by the school board and a refusal to pay by the local authority.(*g*) If after such demand the local authority still refuse to pay, the school board may apply to the High Court for a *mandamus*.

In a united school district the school board apportion the amount required to meet the deficiency in the school fund among the districts constituting the united district, in proportion to the rateable value of each constituent district.(*h*) The board raise the amount required by sending a precept sent to the rating authority of each constituent district.(*h*)

Where one school district contributes to the expenses of the schools in another school district, the authority of the district owning the school may send their precept either to the school board (if any) or to the rating authority of the contributory district, requiring them to pay to

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(*f*) *Shelley School Board* v. *Overseers of Shelley* (1873), 22 W. R. 154; 37 J. P. 758*n*.

(*g*) *School Board of Tetford* v. *Overseers of Tetford* (unreported).

(*h*) 33 & 34 Vict. c. 75, s. 55.

Certificates, notices, requisitions, orders, and other documents may be served on a school board by serving the same on their clerk, or by sending the same to, or delivering the same at, the office of the board.(*a*) In the case of a public elementary school, not under a school board, the managers of such school, or the persons mentioned in the trust creating the school, will appear in such proceedings.

By its constitution, the school board is a body corporate with a perpetual succession and a common seal.(*b*) The rule with regard to contracts of a body corporate being under seal has been clearly and succinctly laid down by Lord COLERIDGE, C.J.:(*c*) "The rule of law is clear that, *primâ facie* and for general purposes, a corporation can only contract under seal; for the proper legal mode of authenticating the act of a corporation is by means of its seal. On this rule, however, certain exceptions have been engrafted. The principle that governs these exceptions is conveniently stated in *Church* v. *Imperial Gaslight Company*(*d*) by the Court of Queen's Bench, which statement is adopted by the Court of Exchequer in the case of *The Mayor of Ludlow* v. *Charlton*.(*e*) It is there stated that 'wherever to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corporation was created, the exception has prevailed—hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring or too insignificant to be worth the trouble of affixing the common seal are established exceptions.'" The above is the general rule applicable to contracts of corporations under seal, and if there were not other provisions in the Elementary Education Acts modifying its application, the rule would be strictly applicable to school boards.

It cannot, however, be overlooked that the school

(*a*) 33 & 34 Vict. c. 75, s. 82.
(*b*) *Ibid.*, c. 75, s. 30 (1).
(*c*) In *Austin* v. *Guardians of Bethnal Green* (1874), L. R. 9 C. P. 94; 43 L. J. C. P. 100.
(*d*) (1837) 6 A. & E. 846.
(*e*) (1840) 6 M. & W. 815.

board is a representative body, intended to provide at meetings of its members for the conduct of the affairs of the board, and to have the proceedings at such meetings duly recorded by minutes. These minutes are made receivable in evidence in all legal proceedings without further proof.(*f*) The purpose intended to be served, therefore, by requiring the seal of a corporate body to be used is thus secured by other means, namely, by a record of the matter in question in the minutes. If these means are adopted the contract made will be a valid contract, though not made under seal. The case of *Scott* v. *Clifton School Board*(*g*) is the nearest authority on the subject. In that case the plaintiff was an architect, and sued the school board for his fees. His contract was not under seal, but the orders given to the plaintiff were agreed to by resolution of the board, and were duly recorded in the minutes. The work he had done was clearly for a purpose incidental to the performance of the duties of the board, and its necessity was shown by the circumstance that the board, with full knowledge of the terms of the contract and of all the facts, had acted upon it, and taken the benefit of the work. Further, "the appointment of any officer of the board may be made by a minute of the board, signed by the chairman and countersigned by the clerk (if any) of the board, and any appointment so made shall be as valid as if it were made under the seal of the board."(*h*) The plaintiff was duly appointed architect to the board under a minute signed by the chairman of the board, and communicated to the plaintiff by the clerk of the board, and the subsequent orders for the execution of the work were given by minutes of the board properly signed and communicated in a similar manner. It was held that upon the above twofold aspect of the facts the plaintiff was entitled to recover.

All proceedings which may be taken, and all offences and penalties (whether under the Elementary Education Acts or bye-laws) which may be prosecuted or recovered

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(*f*) 33 & 34 Vict. c. 75, s. 30 (4).
(*g*) (1884) 14 Q. B. D. 500.
(*h*) 33 & 34 Vict. c. 75, s. 30 (6), Sched. III., r. 7.

on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.(*a*) The court of summary jurisdiction, when hearing and determining an information or a complaint, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.(*b*) In cases where the offender resides in a union extending into different counties proceedings may be taken before the justices of either county.(*c*)

The proceedings taken before a court of summary jurisdiction are guided by the following regulations:—

(1.) In any proceeding for an offence under a bye-law, the court may, instead of inflicting a penalty, make an order directing the child to attend school, and that if he fail to do so, the person against whom such order is made shall pay a penalty not exceeding the penalty to which he is liable for failing to comply with the bye-law.(*d*)

(2.) Any justice may require by summons any parent(*e*) or employer of a child, required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the court, to comply with such summons, shall be liable to a penalty not exceeding 20*s*.(*f*)

(*a*) 33 & 34 Vict. c. 75, s. 92; 36 & 37 Vict. c. 86, s. 23; 39 & 40 Vict. c. 79, ss. 37, 50; 43 & 44 Vict. c. 23, s. 4; *Day Industrial Schools Order*, 20th March, 1877, Art. 39.

(*b*) 36 & 37 Vict. c. 86, s. 23; 39 & 40 Vict. c. 79, s. 37.

(*c*) 39 & 40 Vict. c. 79, s. 34; 30 & 31 Vict. c. 106, s. 27; *Reg.* v. *Eaton* (1881), 8 Q. B. D. 158.

(*d*) 36 & 37 Vict. c. 86, s. 24 (3). For the penalty for failing to comply with a bye-law, see 33 & 34 Vict. c. 75, s. 74.

(*e*) 33 & 34 Vict. c. 75, s. 3.

(*f*) 36 & 37 Vict. c. 86, s. 24 (4).

(3.) A certificate(*g*) purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or stating the particulars of the attendance of the child at such school, or stating that the child has been certified by one of Her Majesty's inspectors to have reached a particular standard of education, shall be evidence of the facts stated in such certificate.(*h*)

(4.) Where a child is *apparently* of the age alleged for the purposes of the proceeding, it shall lie on the defendant to prove that the child is not of such age.(*i*)

(5.) If the child is attending an elementary school which is not a public elementary school it shall lie on the defendant to show that the school is efficient.(*k*) The court, in considering whether any elementary school is efficient, shall have regard to the age of the child and to the standard of education corresponding to such age prescribed by the minutes of the Education Department for the time being in force with respect to the parliamentary grant.(*k*)

(6.) Where a school board are, by reason of the default of the managers or proprietors of an elementary school, unable to ascertain whether a child who is resident within the district of the board and attends that school, attends school in conformity with a bye-law made by the board, it shall lie on the defendant to show that the child has

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attended school in conformity with the bye-law.(*a*)

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Again, if the child is illegally taken into employment in consequence of the production by or with the privity of the parent of a false or forged certificate, or on the false representation of his parent(*f*) that the child is of an age at which such employment is not illegal, the parent shall be liable to a penalty not exceeding 40*s*.(*e*) No penalty attaches to the child who falsely represents his age.

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Further, as to the documents to be received in evidence. Minutes of school board meetings, if signed by

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PART III.

FINANCIAL.

CHAP. I.

INCOME.

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With respect to school boards, the Act of 1870 directs the formation of a school fund as the source of income of a school board.(*a*) To this fund are to be carried all moneys received as fees from scholars or out of moneys provided by Parliament, or raised by way of loan, or in any manner whatever received by the board.(*a*) Any sum required to meet the deficiency of the school fund is to be paid by the rating authority out of the local rate.(*b*) No loan can be raised for the purpose of meeting current expenses.(*c*) The school board serve their precept on the rating authority(*d*) requiring them to pay the amount specified in the precept to the treasurer of the board out of the local rate.(*e*) If the rating authority have no moneys in their hands in respect of the local rate, they are to levy a rate.(*e*) The local authority may

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levy a separate rate in order to meet the precept of the school board; or they may raise the requisite amount by an addition to any rate they may make; that is to say, they may raise by means of the local rate a larger sum than they would require but for the demand of the school fund. If the overseers levy a separate rate, no allowance or publication of such rate appears to be necessary. If they levy one rate for school and other poor law purposes, it should be specified in the demand note how much in the pound is for poor rate and how much for school rate in respect of each person rated, but the separate amounts should not be distinguished in the rate itself. When the local authority wish to raise the question whether the amount specified in the precept is properly and legally required by the school board, it is a very inconvenient mode to raise the objection by refusing to pay the amount specified; and there is, indeed, some doubt whether the local authority can ever really raise the question in this way.(*f*) The more feasible course seems to be to raise the question on the audit of accounts.(*f*) In every case there should be a formal demand by the school board and a refusal to pay by the local authority.(*g*) If after such demand the local authority still refuse to pay, the school board may apply to the High Court for a *mandamus*.

In a united school district the school board apportion the amount required to meet the deficiency in the school fund among the districts constituting the united district, in proportion to the rateable value of each constituent district.(*h*) The board raise the amount required by sending a precept sent to the rating authority of each constituent district.(*h*)

Where one school district contributes to the expenses of the schools in another school district, the authority of the district owning the school may send their [illegible] either to the school board (if any) or to the rati[illegible] rity of the contributory district, requiring them [illegible]

(*f*) *Shelley School Board* v. *Overseers of Shelley* (18[illegible] 154; 37 J. P. 758*n*.

(*g*) *School Board of Tetford* v. *Overseers of* [illegible]

(*h*) 33 & 34 Vict. c. 75, s. 55.

their treasurer the amount specified in the precept.(*a*) The authority or board must pay the same accordingly, and the receipt of the treasurer shall be a good discharge for the same.(*a*) Such amount, if paid by the school board, shall be paid out of the school fund.(*a*)

Where a school board require to raise a sum from any place which is part of a parish, they may appoint an officer or officers to act within such place,(*b*) and such officer or officers shall have all the powers of a rating authority.(*b*) Usually in the case of a divided parish, as between a county and a borough, the overseers are invested with authority to levy a separate rate on the part of the parish liable. In the case of school boards, however, they are to appoint "an officer or officers" to act within such places, but no provision is made for payment of any salary to him, or for the audit of his account of his collection. It will obviously be impracticable for the officer to levy the exact sum required by school boards, and the Act also fails to point out what he shall do with the excess, or to whom he shall account for it.

The rateable value of any parish or school district is the rateable value as stated in the valuation lists (approved by the assessment committee), if any; and "if there are none, then as stated in the rate book for the time being in force."(*c*) Such is the statutory provision, but it is to be observed that it is the poor *rate* that is to be in force, and not the rate book, which may contain many rates. The last poor rate duly made, allowed, and published, is the rate which is in force, and it remains in force till another is made. The overseers and other persons having the custody of such valuation lists and rate book are, when required by the school board, to produce them to the board, and to allow inspection and copies or extracts to be made.(*d*)

If the rating authority make default in paying the

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amount specified, the school board may (without prejudice to any other remedy) appoint an officer or officers to act in place of and have all the powers of the rating authority.(*e*) As has already been pointed out in the case of an officer appointed to raise a sum of money from a part of a parish, there is no power to pay such officer any remuneration, and there is no provision made for the auditing of his accounts, or for his accounting for money which he has raised in excess of what is required. Another remedy which a school board has is to proceed against the rating authority by way of *mandamus*. In *Reg.* v. *The Town Council of Birmingham*,(*f*) the rating authority refused to levy the rate, because they considered the amount was not required, and because the levy would be unpopular with ratepayers, and the board, therefore, as they urged, should appoint an officer to levy the rate in their own name. The court held that these objections were immaterial, and did not show any reason for excusing the rating authority; they, therefore, ordered the authority to levy at once.(*g*)

The weekly fee at a board school is fixed by the school board with the consent of the Education Department.(*h*) The board may, from time to time, remit the whole or part of the fee for a reasonable period, not exceeding six months, in the case of any child where they are of opinion that the parent of the child is unable, from poverty, to pay the fee.(*i*) Further, the guardians have power, in the case of children attending public elementary schools (*i.e.*, board and voluntary schools), to pay the fees (not exceeding 3*d.* a week) of children of parents

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(*h*) 33 & 34 Vict. c. 75, s. 17.

(*i*) Such remission is not to be deemed to be parochial relief given to such parent. *Ibid.*

residing in their jurisdiction, and who are unable to pay such fees.(*a*) They may also pay the fees of children of pauper parents(*b*) not in the workhouse.

CHAPTER II.

THE PARLIAMENTARY GRANT.

THE parliamentary grant is a grant made in aid of an elementary school, either annually or otherwise, out of moneys provided by Parliament for the Civil Service, intituled "For Public Education in Great Britain."(*c*) Under the regulations in force up to the introduction of the Code of 1862, the parliamentary grant was awarded rather for educational machinery than for any results which that machinery produced. One of the objections most strongly urged against the system at that time was, that whilst a minority of the children received a satisfactory education, there was no guarantee that the rest were in any true sense of the term educated at all; that, in fact, the teachers directed their attention chiefly to the upper classes and to the bright children, who were likely to do them credit, while the duller ones were neglected, or, at any rate, given less than their share of individual instruction. The Code of 1862, known as Mr. Lowe's Revised Code, aimed at preventing the possibility of such a state of things. It swept away all the personal payments which had hitherto been made to the teachers; it

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(*a*) 39 & 40 Vict. c. 79, s. 10. The parent is not, by reason of such payment, to be deprived of any franchise, right, or privilege, or to be subject to any disability or disqualification. *Ibid.* The payments thus made by the guardians are charged to the parish with other parochial charges. *Ibid.*, s. 35.

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(*c*) 33 & 34 Vict. c. 75, s. 3.

instituted an individual examination, as a means, not only of assessing the grant, but also of securing that every scholar should have his due amount of instruction from the teacher, and it turned the grant into a single payment to the managers, to whom it was left to distribute the grant as they might think best. The system, thus begun, under which grants have been made to schools mainly according to the results as tested by the annual examination, has been popularly characterised as a system of "payment by results." Whether such a system is good or bad; whether it works well or otherwise, cannot be discussed here.

The parliamentary grant is only made to a public elementary school.(*d*) As has been already stated, no parliamentary grant is now made in aid of building, enlarging, improving, or fitting up an elementary school.(*e*)

There are certain general conditions that must be fulfilled before the school is entitled to earn the grant.(*f*) Some of these conditions are express statutory enactments; others are contained in the minutes of the Education Department in force for the time being.(*g*) The conditions are not to require that the school shall be in connection with a religious denomination, or that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground that it is or is not provided by a school board.(*h*)

1. The school must be conducted as a public elementary school;(*i*) that is to say, the school must conform to the regulations set out in section 7 of the Act of 1870, containing amongst other things the "conscience clause."

(*d*) 33 & 34 Vict. c. 75, s. 96. The regulations for the cond[illegible] public elementary school are contained in *Ibid.*, s. 7.

(*e*) This aid is not now necessary, as school boards are [illegible] build, enlarge, and fit up elementary schools.

(*f*) 33 & 34 Vict. c. 75, s. 97; 39 & 40 Vict. c. 79, s. 1[illegible]

(*g*) Cf. *e.g.*, 33 & 34 Vict. c. 75, s.97.

(*h*) 33 & 34 Vict. c. 75, s. 97.

(*i*) *Ibid*; *Code of Regulations* (1891), Art. 77

2. No child may be refused admission as a scholar on other than reasonable grounds.(*a*)

3. The time-table must be approved for the school by the inspector on behalf of the Department; and, in a school provided by the school board, the consent of the Department must be given to the weekly fee, if any, prescribed by the board.(*b*)

4. The school must not be "unnecessary."(*c*) In a district not under a school board a school is not deemed to be unnecessary if at the time of its application for an annual grant it is recognised as a certified efficient school, and has had during the twelve months preceding such application an average attendance of not less than thirty scholars. A school will not be allowed the benefit of this provision if, within two miles of it by the nearest road there is another school receiving a special grant as being a school in a small or sparsely populated school district, with a population of less than 200 or 300 as the case may be.(*d*) The Department must lay before both Houses of Parliament in every year a special report, stating the cases in which they have refused a grant on the ground that the school is unnecessary, and their reasons for each such refusal.(*e*)

5. The school must not be conducted for private profit, and must not be farmed out by the managers to the teachers.(*f*) The managers must be responsible for the payment of teachers and all other expenses of the school.(*f*)

6. The principal teacher must be certificated.(*g*) *Exceptions:*—(A.) A school with an average attendance of not more than sixty scholars may receive an annual grant if the principal teacher is provisionally certificated. (B.) An evening school may receive an annual grant if the principal teacher is over eighteen years of age and

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(*a*) 33 & 34 Vict. c. 75, s. 97; *Code of Regulations* (1891), Art. 78.
(*b*) *Ibid.*, Art. 79; 33 & 34 Vict. c. 75, s. 17.
(*c*) 33 & 34 Vict. c. 75, s. 98; *Code of Regulations* (1891), Art. 80.
(*d*) *Ibid.* See also Arts. 104, 105.
(*e*) 33 & 34 Vict. c. 75, s. 98.
(*f*) *Code of Regulations* (1891), Art. 81.
(*g*) *Ibid.*, Art. 82.

approved by the inspector. (c.) A school previously in receipt of annual grants may continue to receive them for an interval or intervals not exceeding three months in all (exclusive of the ordinary holidays) in any school year, between the leaving of one and the coming of another teacher qualified under the Code of 1891 to have charge of it, provided the school is kept open and the registers are duly marked during the interval.(*h*)

7. A day school must have met not less than 400 times during the school year; an evening school not less than forty-five times.(*i*) *Exceptions*:—(A.) If the school premises are temporarily used for an election,(*k*) or under any other statutory power, the number of meetings which would in ordinary course have been made had the school premises not been so used may, if necessary, be counted in making up the required number of meetings. (B.) If a school claiming an annual grant for the first time has not been open for the whole school year, or if a school has been closed during the year under medical authority, or for any unavoidable cause, a corresponding reduction is made from the number of meetings required.(*k*)

8. The school must have been visited and reported on by an inspector, unless a continued epidemic or other cause accepted as satisfactory by the Department has prevented such visit and report.(*l*)

9. The Department must be satisfied as to the condition of the premises, staff, furniture, and apparatus; as to instruction in drawing and needlework, and instruction of infants; also, that the admission and daily attendance of the scholars are carefully registered by or under the supervision of the principal teacher, and periodically verified by the managers; that accounts of income and expenditure are accurately kept by the managers and duly audited; that all statistical returns and certificates of character are trustworthy; and that the principal teacher is not allowed to undertake duties not connected with the school which may occupy any part

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(*h*) *Code of Regulations* (1891), Art. 82.
(*i*) *Ibid.*, Art. 83.
(*k*) This may be done under the Ballot Act, 1872, s. 6.
(*l*) *Code of Regulations* (1891), Art. 85.

whatever of the school hours, or of the time appointed for the special instruction of pupil teachers.(*a*)

10. The school must be efficient.(*b*)

11. All returns called for by the Department or by Parliament must be duly made.(*c*) The annual return to be made to the Department contains a form of authority, to be signed by three persons (none of whom may be a paid teacher in the school), empowering one of their number to sign the receipt for any grant made to the school. In a school provided by a school board this authority is not required, but the receipt must be signed by the treasurer of the board.(*c*)

12. The managers must at once comply with any notice of the sanitary authority of the district in which the school is situated, requiring them for a specified time, with a view to preventing the spread of disease, either to close the school or to exclude any scholars from attendance, but after complying they may appeal to the Department if they consider the notice to be unreasonable.(*d*)

13. Immediately on the receipt of the annual report of the inspector, the managers must publish the last account of income and expenditure furnished to the Department, by posting a copy thereof on the door of the school, or in some other public place in the school district, and keeping the same so posted for not less than fourteen consecutive days, exclusive of Sundays and holidays.(*e*) They must also publish in the same manner, and for the same days, a notice that the report will be during such days open to inspection at the school at any reasonable time except the ordinary school hours, or at any other convenient place, and must submit the same to inspection accordingly.(*e*)

14. The income of the school must be "applied only for the purpose of public elementary schools."(*f*) This is held by the Department to allow the school accounts to include part of the salary of an organising teacher, or

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(*a*) *Code of Regulations* (1891), Art. 85.
(*b*) *Ibid.*, Art. 86.
(*c*) *Ibid.*, Art. 87.
(*d*) *Ibid.*, Art. 88.
(*e*) *Ibid.*, Art. 89.
(*f*) 39 & 40 Vict. c. 79, s. 20.

of a teacher of drawing, manual instruction, drill, cookery, laundry work, or any other special subject, employed by the managers of several schools at a central class, or as a peripatetic teacher; but not any outlay on the premises beyond the cost of ordinary repairs, or expenditure on Sunday schools or school treats, or for other purposes not recognised by the Department as educational. Any income from endowment, if spent according to the terms of the trust upon other than educational objects, is not held to be income of the school.(*g*)

15. The grant shall not be made in respect of any instruction in religious subjects.(*h*)

The above fifteen conditions the Department require to be fulfilled before placing the school on the annual grant list.(*i*) The managers of every elementary school have power to fulfil these conditions, notwithstanding any provision contained in any instrument regulating the trusts or management of the school; they have, also, power to apply the grant.(*k*) If any one of these conditions is clearly not satisfied, the inspector is not instructed to visit the school.(*k*) The decision of the Department whether the conditions are fulfilled in any case is final and conclusive.(*l*) In cases where any of the conditions of annual grants set forth in the Code (except such as are specially imposed by Act of Parliament, *e.g.*, Nos. 14 and 15, *supra*) are not fulfilled, the Department have power, after considering all the circumstances, to pay the grant or a portion of the grant, and to give a warning to the managers that the grant may be withheld next year.(*m*)

The annual grant to a school begins to run, as a rule, from the date at which the school is placed under a teacher qualified under the Code to have charge of it;

(*g*) *Code of Regulations* (1891), p. 13.
(*h*) 33 & 34 Vict. c. 75, s. 97 (1).
(*i*) *Code of Regulations* (1891), Art. 91.
(*k*) 33 & 34 Vict. c. 75, s. 99.
(*l*) *Code of Regulations* (1891), Art. 76.
(*m*) *Ibid.*, Art. 92.

but if the application for a grant is not made within six months after such date, the Department may refuse to make a grant for any time previous to the receipt of the application.(*a*)

The annual grant becomes due at the end of the school year, and is paid as soon as may be after the inspection; but an instalment of the grant may be paid when, owing to a change in the month of inspection, or any other sufficient cause, the inspector's visit is postponed for three months or more.(*b*) The grant is made up of several amounts, which, with their amounts, are fully enumerated in the Code for 1891.(*c*)

If the *school board* satisfy the Education Department, that in any year ending the 29th of September, the sum required for the purpose of their annual expenses, and actually paid to their treasurer by the rating authority, amounted to a sum which would have been raised by a rate of 3*d.* in the pound on the rateable value of the school district, and any such rate would have produced less than 20*l.*, or less than 7*s.* 6*d.* per child of the number of children in average attendance(*d*) at the public elementary schools provided by the board, then the board shall be entitled, in addition to the parliamentary grant, to such further sum as, when added to the sum actually paid by the rating authority, would, as the case might be, make up the sum of 20*l.*, or the sum of 7*s.* 6*d.* for each child.(*e*)

The Act of 1876 made provision for assistance to schools in small or sparsely populated districts, and special grants of 15*l.* or 10*l.* were made to schools in districts having a population for the time being (not according to the last census) of less than 200 or 300, with

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(*a*) *Code of Regulations* (1891), Art. 93.
(*b*) *Ibid.*, Art. 94.
(*c*) *Ibid.*, pp. 13, *et seq.*
(*d*) The "average attendance" for any period is found by dividing the total number of "attendances" made during that period by the number of times per week the school has met during such period: *Code of Regulations* (1891), Art. 14.
(*e*) 33 & 34 Vict. c. 75, s. 97.

no other available school nearer than two miles.(*f*) "When the population of the school district in which the school is situate, or the population within two miles measured according to the nearest road from the school is less than 300, and there is no other public elementary school recognised by the Education Department as available for the children of that district or that population (as the case may be), a special parliamentary grant may be made annually to that school to the amount, if the said population exceeds 200, of 10*l*., and if it does not exceed 200, of 15*l*."(*f*)

This special grant is in addition to the ordinary annual parliamentary grant, and is not to be included in the calculation of that grant for the purpose of determining whether it does or does not exceed the 17*s*. 6*d*. limit.(*g*)

The next question to be dealt with under this head is that of the "17*s*. 6*d*. limit." The history of this limit may be shortly stated. The Code in force before 1870 limited the parliamentary grant to half the expenses, and was not to exceed 15*s*. per head on the average attendance. In 1870, the average cost of aided schools was 25*s*. 5*d*. per head, and the average grant was 9*s*. 9½*d*. In the debates on Mr. Forster's bill, however, the annual cost of an efficient school was estimated to be about 30*s*. per head, of which the State, the managers, and the parents were each assumed to contribute about one-third. This sum (30*s*.) was made the basis of all calculations of school expenditure during the discussion of the bill, and was taken as the probable future cost of an efficient school. The addition of 50 per cent. to the 10*s*. grant, originally proposed by the bill, was avowedly intended, while encouraging improvement generally, to raise the State contribution from one-third to one-half of the annual cost, and at the same time to reduce the charge on the managers to one-half (5*s*.) of their existing responsibility. Under the new Code, therefore, of 1871, the grant was

(*f*) 39 & 40 Vict. c. 79, s. 19 (2).
(*g*) *Ibid*., s. 19 (3).

their treasurer the amount specified in the precept.(*a*) The authority or board must pay the same accordingly, and the receipt of the treasurer shall be a good discharge for the same.(*a*) Such amount, if paid by the school board, shall be paid out of the school fund.(*a*)

Where a school board require to raise a sum from any place which is part of a parish, they may appoint an officer or officers to act within such place,(*b*) and such officer or officers shall have all the powers of a rating authority.(*b*) Usually in the case of a divided parish, as between a county and a borough, the overseers are invested with authority to levy a separate rate on the part of the parish liable. In the case of school boards, however, they are to appoint "an officer or officers" to act within such places, but no provision is made for payment of any salary to him, or for the audit of his account of his collection. It will obviously be impracticable for the officer to levy the exact sum required by school boards, and the Act also fails to point out what he shall do with the excess, or to whom he shall account for it.

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instituted an individual examination, as a means, not only of assessing the grant, but also of securing that every scholar should have his due amount of instruction from the teacher, and it turned the grant into a single payment to the managers, to whom it was left to distribute the grant as they might think best. The system, thus begun, under which grants have been made to schools mainly according to the results as tested by the annual examination, has been popularly characterised as a system of "payment by results." Whether such a system is good or bad; whether it works well or otherwise, cannot be discussed here.

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(*f*) 33 & 34 Vict. c. 75, s. 97; 39 & 40 Vict. c. 79, s. 19.

(*g*) Cf. *e.g.*, 33 & 34 Vict. c. 75, s.97.

(*h*) 33 & 34 Vict. c. 75, s. 97.

(*i*) *Ibid; Code of Regulations* (1891), Art. 77.

for which the school has met during such period.(*a*) The school will have to be open at least 400 times in the school year, unless sickness or other unavoidable causes intervene to make this impossible; every attendance of a half-timer will be counted as an attendance and a half; and ·5, or any larger decimal in the resulting average, must be reckoned as one.

Should the managers resolve to accept the fee grant, then in their schools either (1) where the average rate of fees received during the school year ended last before the 1st of January, 1891, was *not* in excess of ten shillings a year for each child in average attendance;(*b*) or (2) for which an annual parliamentary grant has not fallen due before the 1st of January, 1891, no fee shall be charged for children over three, and under fifteen years of age, except in the case mentioned *infra*.(*c*) If, however, the average rate was in excess, the fees to be charged for children over three, and under fifteen years of age, shall not be such as to make the average rate of fees for all such children exceed for any school year the amount of the excess.(*d*) That is to say, if we take the case of Birmingham, where the fee per scholar in average attendance has been 5*s*. 6*d*., on the acceptance of the fee grant, no school fees can be further charged. On the other hand, if we take the case of Manchester, where the fee per scholar in average attendance has been 14*s*. 4*d*., on the acceptance of the fee grant, the school fee that can be then charged will be the difference between the 10*s*., the fee grant, and the 14*s*. 4*d*., the former school fee, namely 4*s*. 4*d*. In other words, the schools which now accept the fee grant, and which have hitherto been charging less than ten shillings per year may charge no fee, while schools which have hitherto charged more may now only charge the difference.

There is a further prohibition of charges in certain schools which receive the fee grant.(*e*) In any school

(*a*) *Code of Regulations* (1891), Art. 14.
(*b*) As to "average attendance," see *supra*.
(*c*) 54 & 55 Vict. c. 56, s. 2 (1).
(*d*) *Ibid*., s. 2 (2).
(*e*) 54 & 55 Vict. c. 56, s. 3.

receiving the fee grant, where the average rate charged and received in respect of *fees and books, and for other purposes*, during the school year ended last before the 1st of January, 1891, was *not in excess* of ten shillings a year for each child in average attendance, *no charge of any kind* is to be made for any child over three and under fifteen years of age.(*f*) If, therefore, the total amount charged in respect of fees, books, coal and other purposes was ten shillings or under, no fee or charge can now be made. The average here will be difficult to ascertain as accounts for books, &c., have been kept very irregularly. It will, futhermore, be greatly to the advantage of schools to be enabled to charge for books, &c.; hence the necessity for a very careful estimate of the sum hitherto spent by each child for books and other materials.

It will thus be seen that there are four distinct classes under which elementary schools may range themselves with reference to the fee grant :—

1. The schools which refuse the fee grant and continue to charge fees. The schools which come within this class are not affected by the Act at all, and, therefore, may be dismissed without further consideration.

2. The schools which have hitherto charged for fees and books and other purposes a sum less than ten shillings per scholar, or to which a parliamentary grant has not fallen due before the 1st of January, 1891. These schools, as already remarked, will become absolutely free of all charges upon agreeing to accept the fee grant.

3. The schools which have hitherto charged less than ten shillings in actual fees, but with books, &c., added to the account, more than ten shillings per scholar. In all these schools there will henceforth be no school fee, but charges for books or other purposes may still be made.

With reference to schools which fall within Classes 2 and 3, it would appear that they are at liberty to charge any sum they please for any scholar under three and over fifteen, if the gross amount so charged, when added to the fee grant, does not amount to more than ninepence a week when spread over the whole average attendance.

(*f*) 54 & 55 Vict. c. 56, s. 3.

To charge more would take the school out of the rank of elementary schools.(*a*)

4. The schools whose fees have been above ten shillings. In these schools a reduced fee may be charged, and books may be bought by the scholars as hitherto. It has been pointed out that managers of these schools may adopt one of three courses: In the first place they may agree to set free all their scholars between three and fifteen, making up for their loss of income in the case of a voluntary school by increasing their contributions, and in the case of a board school by an increase of the school rate; or, secondly, they may throw open to some of their scholars a certain number of free places, charging reduced or re-adjusted fees for the rest; or, thirdly, they may continue to charge a reduced fee all round, leaving it to other schools in the same or neighbouring school districts to supply whatever demand there may be made for free places.

In every case where the managers of a school in Class 4 continue to charge fees, the managers in consenting to accept the fee grant must so adjust their scale of fees as to secure that the average annual sum per head received from children between three and fifteen, when increased by the fee grant of ten shillings a head, shall not exceed the "average rate of fees" as above explained for the school year last ended before the 1st of January, 1891. Thus, *e.g.*, to take the case of Manchester already mentioned, where the average rate of fees for 1890 was fourteen shillings and fourpence, by deducting ten shillings (the fee grant), we get four shillings and fourpence as the amount which would represent the limit of the future annual yield per head of fees chargeable in that school from children between three and fifteen. There are various ways in which this sum may be collected: it may be collected by claiming a weekly fee on every scholar between three and fifteen; or it may be collected by freeing one-half and charging the other half double, or by freeing one-third and making the amount up from the other two-thirds in equal amounts, or by a smaller amount from one of these two-thirds and a larger amount from the other of the two-thirds; and so on. The arrange-

(*a*) *Cf.* 33 & 34 Vict. c. 75, s. 3.

ment, however, must be specific, and apply to definite classes of scholars. Fees cannot be charged by way of fine in the case of irregular attendance(*b*) or remitted by way of reward in the case of regular attendance.

These calculations must in some cases run very fine, and prove very difficult and complicated, and errors may quite inadvertently occur. Such errors, moreover, might lead to serious consequences, where, *e.g.*, a calculation showed a smaller fee to be charged than that which has been actually charged. Such a case would clearly constitute a breach of the conditions on which the fee grant was to be received,(*c*) and would thereby forfeit the right of the managers to receive such grant. To meet a case such as this—a case of mere inadvertence—sub-section 2 of section 1 was introduced into the Act. It provides that "if in any case there is a failure to comply with the conditions in the Act,"(*d*) that is to say, "if from any accident or miscalculation the fees actually charged are found at the end of the school year to have exceeded the maximum allowable under the Act,"(*e*) and the Education Department are satisfied that there was *reasonable* excuse for the failure or for such excess, the Department may pay the fee grant.(*e*) In that case, however, if the amount received from fees has exceeded the amount allowed by the Act, the Department are to make a deduction from the fee grant equal to that excess.(*f*) A further effect of this provision will be indirectly to prevent schools raising their fees without the direct sanction of the Department.(*g*)

(*b*) The Education Department are understood to have recently approved a bye-law providing that in the case of the irregular attendance of any scholar the managers of any school otherwise free shall have the power of calling upon the parent to pay the school fee of the scholar for the week in which the irregular attendance occurred. But as money so exacted in the name of fees would be essentially of the nature of a penalty or fine, in which way payment cannot be enforced, and as express statutory penalties are already imposed on parents in the case of irregular attendance, the validity of the bye-law, imposing as it does a new penalty, must be regarded as open to grave doubt.

(*c*) 54 & 55 Vict c. 56, s. 1 (1).

(*d*) *Ibid.*, s. 1 (2).

(*e*) Education Department, Form 67.

(*f*) 54 & 55 Vict. c. 56, s. 1 (2).

(*g*) *See also Ibid.*, s. 4.

The fee grant is to be paid quarterly; that is to say, it is to be paid by quarterly instalments for each three months completed during the school year for which the grant is payable.(*a*) The fourth or final instalment is not to be paid at the end of the quarter when it becomes due, but along with the annual parliamentary grant which is payable to the school.(*b*) The amount of the grant to be paid is calculated at the rate of one-twelfth of the amount of the grant (*i.e.*, ten shillings) for each month which shall have elapsed from the date at which the school began to satisfy the conditions of the Act,(*c*) if such date were the first day of a month, or if not the first day of a month, then from the first day of the month succeeding that date.(*d*)

The fee grant is to be paid on the average attendance of children between three and fifteen in the year then current.(*e*) But as this average attendance cannot be ascertained till the close of the school year, it is provided that the instalments for the first three quarters are to be calculated and paid on the average attendance of children between three and fifteen during the last preceding school year.(*f*) Again, as the statistics furnished by the managers on Form 9 at their last annual inspection did not distinguish between children within and outside the limits of the Act, *i.e.*, children below and above fifteen, it is further provided that in such cases the quarterly instalments are to be calculated upon the *total average* attendance as returned in that Form.(*g*) If, however, the school is a new school, and has not yet completed a school year before the 1st of September, 1891, the Education Department have reserved to themselves the right to calculate the instalments to be paid upon the average

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(*a*) *Regulations as to the Time and Manner of Payment of Fee Grants* (26th August, 1891), 2 (*a*).
(*b*) *Ibid.*, 2 (*b*).
(*c*) *Ibid.*, 1.
(*d*) *Ibid.*, 6.
(*e*) 54 & 55 Vict. c. 56, s. 1.
(*f*) *Regulations as to the Time and Manner of Payment of Fee Grants* (26th August, 1891), 3.
(*g*) *Ibid.*, 3 (*a*).

attendance for such period as they may determine in each particular case,(*h*) and upon the basis the Department so adopt the instalments will be paid.

No greater interval than three months will elapse between the payments of the quarterly instalments, save in the case of the fourth or final payment for the school year. If the school year should end on the 30th of September, 1891, fee grants will be received as follows:—One month in October, 1891, and three months in every succeeding January, April, July, and October, in which month the fourth or final payment will be due. If, again, the school year should end on the 31st of October, 1891, fee grants will be received as follows:—Two months in November, 1891; three months in every succeeding February, May, August, and November, in which month the fourth or final payment will be due. Corresponding dates for other periods can easily be calculated. Now, the first, second, and third quarterly instalments will be paid on the dates when they respectively fall due, but the fourth or final instalment is not to be paid when it actually falls due, but along with the annual grant,(*i*) which is always paid some weeks after the inspector's visit and the close of the school year. The reason for the delay in the payment is obvious. The amount that may be found due in respect of the fourth or final instalment of the fee grant cannot be ascertained until the returns for the year are made and examined. The inconvenience to managers of schools, however, arising from this arrangement must be considerable, inasmuch as the payment of this instalment will be postponed until the following financial year. Although, therefore, the unpaid instalment may be reckoned for purposes of the annual grant, it cannot appear in the balance-sheet of the school as revenue for the current year. In place of the school pence which was paid from week to week, managers will practically lose, at least for the first year, the benefit of this final instalment.

The first three instalments are to be paid as they

(*h*) *Regulations as to the Time and Manner of Payment of Fee Grants* (26th August, 1891), 3 (*b*).
(*i*) *Ibid.*, 2 (*b*).

become due. There will accordingly be paid to the managers 2*s.* 6*d.* every quarter in respect of each child who makes up the total average attendance of the school for the preceding school year. Each of these instalments "shall not exceed three-twelfths of the 'fee grant' multiplied by the number of children over three and under fifteen years of age in average attendance . . . . during the last preceding school year."(*a*) The fourth or final instalment will be so calculated as to bring up the whole fee grant for the year to 10*s.* a head on the average attendance of children above three and under fifteen as found at the end of the current school year. The way in which this calculation will work out may be shown as follows:—Suppose a school where the total average attendance was 100 during the last preceding school year, the payments in respect of the first, second, and third instalment will be 12*l.* 10*s.* each, and if the average during the current year has been kept at 100 the fourth or final instalment will also be 12*l.* 10*s.*, making a total fee grant of 50*l.* Suppose, however, the average has fallen to 80, then the amount paid on the fourth or final instalment will be the difference between the amounts actually paid and the amount still remaining unpaid. Thus, the sum of 37*l.* 10*s.* (*i.e.*, three instalments of 12*l.* 10*s.* each) has been paid; the total amount of fee grant on an average attendance of 80 is only 40*l.*; therefore, the balance of the fee grant now remaining unpaid is only 2*l.* 10*s.* The sum of 2*l.* 10*s.* will, therefore, be the amount of the fourth or final instalment. Suppose, again, the average attendance has risen to 120, this would give a fee grant of 60*l.* The amount due in respect of the fourth or final instalment will, as before, be the difference between this amount and the amount actually received, namely, 37*l.* 10*s.*; the amount that remains to be paid is, therefore, 22*l.* 10*s.* To take a further illustration: suppose the average attendance should have fallen from 100 in the preceding year to 72 in the current year, the sum of 37*l.* 10*s.* (the total amount of the three instalments of 12*l.* 10*s.* each) will have been paid; the total amount of

(*a*) *Regulations as to the Time and Manner of Payment of Fee Grants* (26th August, 1891), 3.

fee grant on an attendance of 72 is only 36*l.*; no fourth or final instalment is, therefore, due to the managers, and, indeed, the sum of 1*l.* 10*s.* has been overpaid by the Department. In a case of this kind there seems to be no power under which the Department can claim a return of the amount so overpaid.

The instalments of fee grants are to be paid in the case of schools not provided by a school board to the correspondent,(*b*) and in the case of schools provided by a school board to the treasurer.(*c*)

The effect of accepting the fee grant will be different in different localities. To take one or two examples of school boards: In London, where the rate is over 1*l.* 13*s.* per scholar, unless the Department requires considerable increase in the cost of school maintenance, there will be immediate relief to the rate to the extent of 2*s.* 6*d.* per scholar, or about 8½ per cent. of the total rate. In Birmingham, where the rate has been 16*s.*, and the school pence 5*s.* 6*d.*, the relief to the rate will be 4*s.* 6*d.*, or a reduction of over 25 per cent. In Manchester, on the other hand, where the school rate has been kept at the low figure of about 9*s.* per scholar, and school fees at about 14*s.*, an immediate increase of about 50 per cent. must follow the freeing of the board schools; whilst, in Sheffield, where the school fees run about 12*s.*, the increase will be about 25 per cent.

Similar effects, though in a less marked degree, will be felt in voluntary schools of different denominations and in different localities. In all schools charging a fee of 2*d.* per week on the average attendance, the grant of 10*s.* per child will result in an increase of income to the school of 2*s.* 6*d.* per scholar. This increase of income in a school of 320 scholars will amount to 40*l.* per annum. In all such cases it is evident that unless the Education Department demand an increase in the school staff, or make other educational requirements, the managers, like the

(*b*) "Managers are required to appoint a correspondent with the Department, who must not be any paid teacher in the school": *Code of Regulations* (1891), Art. 9.

(*c*) *Regulations as to the Time and Manner of Payment of Fee Grants* (26th August, 1891), 5.

school boards referred to above, will receive substantial advantage. In many cases the help thus derived will equal the subscriptions, and, in some cases, may exceed them. In schools, however, of high fees the managers will not be able to reap the slightest advantage from accepting the fee grant of 10*s.* per scholar, inasmuch as the fee grant can only be applied to the reduction of the income previously derived from fees. A school, for example, charging a uniform fee of 6*d.* per week, receives in a year of 45 weeks the sum of 22*s.* 6*d.* per scholar. By accepting the fee grant the 22*s.* 6*d.* is in no way increased; it is simply paid to the managers in a different form. Instead of the parents paying the whole amount in fees, they pay 12*s.* 6*d.* of the entire sum, the fee grant covering the remaining 10*s.* It is thus evident that it is the managers of schools which have hitherto been paid a low fee who will receive the greatest advantage from the working of the fee grant. It is also clear that the greatest relief as regards the payment of fees will not be to those parents who send their children to schools with fees hitherto below 3*d.*, but to those parents who send their children to schools exacting a fee above 3*d.* per week. In all the latter cases the parents reap the entire advantage of the grant in reduction of fees, and the managers gain nothing, whereas in all schools below the 3*d.* fee, both managers and parents share in the benefits of the grant.

In the case of a new school, or a school which began to receive the ordinary annual parliamentary grant(*a*) at some date subsequent to the 31st December, 1890, the managers cannot charge any fee without the consent of the Education Department. Provision is made in the Act for enabling a school which, having accepted the grant, is in the position of a free school, subsequently to charge fees, or, to use the phraseology of the Act, "to modify the limit of fees in certain cases."(*b*) This power is entrusted to the Education Department. Before the Department can exercise this power they must be satisfied of two things—(1) That there is sufficient public

(*a*) *Ante*, p. 120; 54 & 55 Vict. c. 56, s. 2 (1).
(*b*) 54 & 55 Vict. c. 56, s. 4.

school accommodation, *without payment of fees*, provided for the district; and (2) that the charge of fees, or the increase of fees is required owing to a change of population in the district, *or* that it will be for the *educational benefit* of the district, or any part of the district.(*c*) If the charge is to be made, the total ordinary fee to be charged must not exceed *sixpence* a week for each child.(*d*)

It may be conjectured that the Department will not readily allow managers of schools to raise their fees, inasmuch as every case "in which they have sanctioned or refused the imposition or augmentation of fees . . . with a statement of the amount of fee permitted" must be reported to Parliament.(*e*) It will also be noticed that the rise in the scale of fees must be for the "educational," and not merely the "social," advantage of the district. When it is furthermore remembered that the Department cannot take into consideration the demands for free places (see *infra*) before the 1st of September, 1892, it is evident that a full year must elapse before any application for the raising of fees can be entertained by them. In the meantime, existing schools will have adjusted themselves to the new conditions, and changes in the direction of raising fees will afterwards be extremely difficult to make.

Further, the Education Department may, if they think fit, make it an *express condition* of their approval that the amount received for any school year(*f*) from the fees so charged or increased, or a specified portion of that amount, shall be taken in reduction of the fee grant which would otherwise have been payable for that school year, and in that case the fee grant shall be reduced accordingly.(*g*)

(*c*) 54 & 55 Vict. c. 56, s. 4.

(*d*) *Ibid.* If it were to exceed this limit it would take the school out of the rank of an elémentary school: *Cf.*, 33 & 34 Vict. c. 75, s. 3.

(*e*) 54 & 55 Vict. c. 56, s. 4 (2).

(*f*) *i.e.*, a year or other period for which an annual parliamentary grant is for the time being paid or payable under the minutes of the Education Department: *Ibid.*, s. 10.

(*g*) *Ibid.*, s. 4 (3).

be assigned the task of supplying the *free* school accommodation found to be needed(*a*) and the management of the school.(*b*)

In the next place, with reference to voluntary schools, the managers of two or more public elementary schools in the same district or in neighbouring districts may pay the fee grant or part thereof received by each school into a common fund for the purpose of distribution(*c*) among the schools so contributing. The terms upon which the distribution will be carried out will be such as may be agreed upon by the managers.(*c*) This power of mutual contribution is strictly confined to voluntary schools, and does not extend to board schools.(*c*) With regard to the 17*s*. 6*d*. limit, it is provided that each fee grant is to count as income only for the particular school for which it is received, and a contribution to a school from such common fund is not to be reckoned as income of the school "from other sources"(*c*) with reference to the 17*s*. 6*d*. limit.

This is an important provision for enabling one school to render financial aid to another, while maintaining the individuality of both. If a wealthier school were to ally itself to a poorer school, the wealthier school could, *e.g.*, relinquish the whole or part of its fee grant for the benefit of the poorer school, and thus enable the poorer school to become well equipped and to be declared free; while the wealthier school might develop into a higher grade school, and could minister, by still charging fees, to the wants of that class of children whose parents would prefer such teaching for their children and would not

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(*a*) 54 & 55 Vict. c. 56, s. 5.

(*b*) This provision may perhaps prove to be, as some have predicted, the leaven which is to leaven the whole lump, so that in the course of a few years all elementary schools will be free. It is to be noticed, however, that a parent, although residing in a free school district, may still have to pay for the *education* of his child, if it is sent to a day industrial school, whither it may be sent through no fault of the parent; for in that case the parent may be ordered to contribute weekly sums to the child's "industrial training, *elementary education*, and meals in the school." See 39 & 40 Vict. c. 79, ss. 16, *et seq.*

(*c*) 54 & 55 Vict. c. 56, s. 6.

object to pay fees. Such an arrangement as this would also supply the school district or neighbouring districts with free places, and also relieve managers from any difficulty that might be experienced from having free as well as paying scholars attending one school.

CHAPTER IV.

ENDOWMENTS.

PUBLIC ELEMENTARY SCHOOLS are now enabled to benefit by endowments.(*d*) The "governing body" (*i.e.*, generally the school board or the managers of a voluntary school) may frame and submit to the Education Department a scheme respecting the endowment of the school,(*e*) with a view to promoting the greater efficiency of the school and carrying into effect the main designs of the founders.(*f*) The gross average annual income of the aggregate educational endowments of the school must not, however, for the three years prior to the 1st of September, 1873, have exceeded 100*l.*(*g*) The Act of 1870 provided also that on the transfer of a school the endowments belonging to the school should go with it.(*h*) By the Act of 1873 a school board may become trustees for any educational endowment or any charity for purposes connected with education.(*i*) That Act provides that a school board shall be able to be "constituted trustees for any educational endowment or charity for purposes connected with education, whether such endowment or charity was established before or after the passing "(*k*) of the Act of 1870. It also provides that a school board shall have the power to accept any real or personal pro-

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(*d*) 33 & 34 Vict. c. 75, s. 75; 36 & 37 Vict. c. 86, s. 12.
(*e*) 33 & 34 Vict. c. 75, s. 75.
(*f*) 32 & 33 Vict. c. 56.
(*g*) 36 & 37 Vict. c. 87, s. 3.
(*h*) *Ibid.*, c. 86, s. 13.
(*i*) 33 & 34 Vict. c. 75, s. 23.
(*k*) *i.e.*, 9th August, 1870.

perty given to them as an educational endowment or upon trust for any purposes connected with education.(*a*)

The purposes of the endowment, charity, or trust must not be inconsistent with the principles on which the school board are required by section 14 of the Act of 1870 to conduct schools provided by them,(*b*) that is to say, the purposes must not be inconsistent with conducting the school as a public elementary school in which no religious catechism or religious formulary which is distinctive of any particular denomination can be taught.(*c*) Every school connected with such endowment, charity, or trust is to be deemed to be a "school provided by the school board" (*i.e.*, a board school), but the Act does not authorise the school board to expend any money out of the local rate for any purpose other than elementary education,(*d*) nor is the law of mortmain affected by the Act.(*e*)

Schemes may provide, in such manner as may render any educational endowment most conducive to the advancement of the education of boys and girls, or either of them, for altering or adding to any existing trusts, directions and provisions, or for making new trusts, directions and provisions in lieu of any existing trusts, directions and provisions which affect the endowment or the education promoted thereby, including the consolidation of two or more endowments, or the division of an endowment into two or more endowments.

In settling a scheme for the regulation of the funds of a charity school on its transfer to a school board, care should be taken to provide that the funds shall be applied for the advancement of learning in the school,—as, for instance, by establishing exhibitions or scholarships,—and not for the general purposes of the school, which would have the effect of a grant in aid of local rates.(*f*) If the fund

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(*a*) 36 & 37 Vict. c. 86, s. 13.
(*b*) *Ibid.*, s. 13 (1).
(*c*) 33 & 34 Vict. c. 75, s. 14.
(*d*) 36 & 37 Vict. c. 86, s. 13 (2).
(*e*) *Ibid.*, s. 13 (3). See 9 Geo. 2, c. 36.
(*f*) *Cf.*, *In re Poplar and Blackwall Free School* (1878), 8 Ch. D. 543.

were to be applied for the general purposes of the school, it would go not strictly for the benefit of the school, but for the reduction of the school rate.

The above principle is illustrated in the following case:—The scheme for the regulation of an undenominational elementary school provided that the trustees of an annuity of 90*l.* should pay it to the treasurer of a school association for the benefit of the school in Flint Street, "or any other school that may be established in its stead," and also provided "that if any such school shall not at any time hereafter fall substantially within the description of school within the terms of such grant, or shall become materially altered in discipline, number of children or other circumstance," the annuity might be applied, "in the discretion of the trustees, for educational purposes amongst other schools of a similar character" in the parish. The school in question was transferred to the school board for London, and, as managed by the board, was one for boys and girls (the original school being for boys only). The board intended to apply the annuity towards prizes and scholarships, enabling the scholars to take the benefit of more advanced schools, though it was admitted that there was no law to prevent the board applying the annuity towards the support of other schools in the metropolis. The school board were held entitled to be paid the annuity of 90*l.*, the school not having, by the fact of such transfer, become "materially altered in discipline umber of children, or other circumstance."(*g*)

(*g*) *School Board for London* v. *Faulconer* (1878), 8 Ch. D. 571; 26 W. R. 652.

CHAPTER V.

ACCOUNTS AND AUDIT.

THE accounts of a school board are to be made up and balanced half-yearly, up to the 25th of March and the 29th of September in every year, where the district of the board contains 15,000 inhabitants or upwards, according to the last census, or where the board consists of nine or more than nine members,(*a*) and annually up to the 29th of September where the district contains less than 15,000 inhabitants, or the board consists of less than nine members.(*a*)

The accounts are to be examined by the school board, and signed by the chairman.(*b*) The time within which this is to be done is as follows (the time being reckoned from the day to which the accounts are made up):—

School Board of London	Two months.
Where the district under the school board contains a population of 200,000 or more, according to the census last published	Six weeks.
Where the district under the school board contains a population between 100,000 and 200,000, according to the last census ...	Four weeks.
Where the district under the school board contains a population between 50,000 and 100,000, according to the last census	Three weeks.
Where the district under the school board contains a population of less than 50,000, according to the last census	Two weeks(*c*).

(*a*) 36 & 37 Vict. c. 86, s. 17; *School Board Accounts Order* (1880), Art. 14; *School Board Instructions* (revised 1891), Arts. 4, 5.
(*b*) 36 & 37 Vict. c. 86, s. 17.
(*c*) *School Board Accounts Order* (1880), Art. 15.

Whenever the school boards of any two or more school districts combine together, with the sanction of the Education Department,(*d*) for all purposes relating to elementary schools in such districts, such boards may, so long as they continue so combined, keep one set of accounts in common.(*e*) In all respects the several provisions and instructions which refer to separate school boards apply to boards so combined, with this exception, that in the ledger a separate account is to be opened for each borough, parish, or part of a parish, as the case may be, constituting each district, showing, on the one hand, all moneys received from the rating authority of such borough, parish, or part of a parish, and, on the other, all charges which are borne by such borough, parish, or part of a parish separately.(*e*) If the agreement for the combination of the school boards provides merely for the appointment of a joint body of managers for particular schools, the managers must render accounts to the school board whose school fund is charged with the expenditure incurred in providing and maintaining the school accommodation specified in the agreement.(*f*)

The clerk to the board must enter from time to time, at proper dates, in the minute book of the board, a statement of *all* authorities for the receipt and payment of moneys, *all* precepts issued by the board, and *all* minutes relating to any other pecuniary transactions of the board.(*g*) He must also accurately keep, and punctually make, the entries in the following books of account—a cash book, a ledger, a petty cash book, and an abstract book.(*h*) If an accountant is appointed to keep the accounts of the board, he is to keep these books instead of the clerk.(*i*) The financial statement to be prepared and submitted to the district auditor, in duplicate, by the school board as the local authority, in accordance with

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(*d*) This may be done under section 52 of the Act of 1870. See *ante*, p. 17.
(*e*) *Accounts of School Boards Order* (1880), Art. 16.
(*f*) *Ibid.*, Art. 17.
(*g*) *Ibid.*, Art. 4.
(*h*) *Ibid.*, Art. 5.
(*i*) *Ibid.*, Art. 7.

the provisions of the District Auditors Act, 1879, is to be prepared by the clerk.(*a*)

The treasurer keeps the "treasurer's account," in which are entered all moneys received and paid by him on account of the board.(*b*) This account he must balance quarterly. He must also cause it to be laid before the board once every month, or oftener if required by them, and must lay it and his banker's pass book before the district auditor at the time of audit.(*b*) This account may, however, be dispensed with, where a pass book confined exclusively to the funds of the school board is kept and produced to the district auditor at the audit of the accounts of the board.(*b*)

If the school board has delegated to a body of managers under section 15 of the Act of 1870 the control and management of the finances of any school, the managers shall appoint some one of themselves, or shall require the board to appoint an officer to act as school treasurer, and to keep the accounts for such school.(*c*) The school treasurer or manager shall duly and punctually keep a school cash book, in which he shall enter all moneys received and all payments made by him on behalf of the school.(*d*) This he must close and balance at the times already indicated.(*e*)

Every schoolmaster must keep a school fees account (where he receives fees), a sales account (containing items of all books and other articles taken out of store and sold to the children), and a stock and stores account of all books and other articles entrusted to his charge, showing how the same have been disposed of, and what remains in store.(*f*) If the board has appointed a person to collect the fees and take charge of the stock and stores, he shall perform the duties of the schoolmaster in this respect.(*g*)

(*a*) *Accounts of School Boards Order* (1880), Art. 8.
(*b*) *Ibid.*, Art. 9.
(*c*) *Ibid.*, Art. 10.
(*d*) *Ibid.*, Art. 11.
(*e*) *Ante*, p. 148.
(*f*) *Accounts of School Boards Order* (1880), Art. 12.
(*g*) *Ibid.*, Art. 13.

As soon as practicable after the accounts have been signed by the chairman,(*h*) they shall be audited.(*i*) The auditor of school board accounts is the auditor of accounts relating to the relief of the poor.(*k*) The Local Government Board assign the districts in which the auditors are respectively to act.(*l*) The remuneration of the auditor was formerly paid by the school board direct to the auditor by whom their accounts were audited; but now the salaries and expenses of district auditors are paid by the Local Government Board out of moneys provided by Parliament.(*m*) For the purpose of contributing to the amount required, each school board, whose accounts are audited by the district auditor, are required to pay stamp duty according to a prescribed scale. Thus—

Where the total of the expenditure comprised in the financial statement is

Under 20*l.*	the sum shall be...	5*s.*
20*l.* and under 50*l.*	,, ,, ...	10*s.*
50*l.* and under 100*l.*	,, ,, ...	1*l.*
100*l.* and under 500*l.*	,, ,, ...	2*l.*
500*l.* and under 1,000*l.*	,, ,, ...	3*l.*
1,000*l.* and under 2,500*l.*	,, ,, ...	4*l.*
2,500*l.* and under 5,000*l.*	,, ,, ...	5*l.*
5,000*l.* and under 10,000*l.*	,, ,, ...	10*l.*
10,000*l.* and under 20,000*l.*	,, ,, ...	15*l.*
20,000*l.* and under 50,000*l.*	,, ,, ...	20*l.*
50,000*l.* and under 100,000*l.*	,, ,, ...	30*l.*
100,000*l.* and upwards	,, ,, ...	50*l.*

For the purpose of the above scale the expenditure comprised in the financial statement is to be exclusive of any sum paid to another local authority in pursuance of a precept.(*n*)

(*h*) *Ante*, p. 148.
(*i*) 36 & 37 Vict. c. 86, s. 17.
(*k*) 33 & 34 Vict. c. 75, s. 60.
(*l*) 42 Vict. c. 6, s. 4.
(*m*) *Ibid.*, s. 4.
(*n*) *Ibid.*, Sched. 1.

The audit will take place half-yearly or yearly, according as the accounts are made up half-yearly or yearly.(*a*) "The school board audits should be held on the same days and at the same places as the union audits."(*b*) The time is fixed by the auditor,(*c*) but it "shall be as soon as may be after the account is signed by the chairman,"(*c*) that is to say, the time must be made to fit in with the auditor's arrangements for poor law audits. The auditor cannot properly fix a day for the audit of school board accounts until he has ascertained that such accounts have been signed by the chairman.

The audit will be held at the office of the school board, or some other place sanctioned by the poor law board within the district, or within the union within which the school district, or some part of it, is situate.(*c*) If the audit is to take place in the board room of the guardians, special application must be made in each case. The auditor, at least fourteen days before holding the audit, "must serve on the school board," through the clerk, and "publish notice of the time and place of holding the same,"(*d*) by advertising the notice in one or more of the local newspapers.(*e*) The clerk shall, thereupon, publish the following notice, by causing a copy of the same to be affixed on the board room of the school board, and on the outer door of the building where it is situated, and on the outer door of every school, the accounts of which are to be submitted to the district auditor:—(*f*)

"——— School Board.

"Notice is hereby given, that the yearly (*or* half-yearly) statement of accounts of this school board, and of the schools provided by such board, together with the respective books of account will, on the . . day of . . . . . be deposited at . . . . . ; and such state-

(*a*) *School Board Accounts Order* (1880), Art. 18.
(*b*) *Local Government Board Circular*, 9th May, 1873.
(*c*) 33 & 34 Vict. c. 75, s. 60 (2).
(*d*) *Ibid.*, s. 60 (3).
(*e*) *School Board Accounts Order* (1880), Art. 23.
(*f*) *Ibid.*, Art. 19.

ment and books of account will be open to be inspected and examined and copied by any ratepayer in the district of the said board, at any reasonable hour in the day-time, when the board is not sitting, until the . . day of . . . . . ; and that on the last-mentioned day, at the hour of . . . . . the accounts of the board and of the separate schools will be audited by . . . . . the district auditor, at . . . . when and where every such ratepayer, who may have any objection to any matter contained in the above-mentioned accounts, may attend, and prefer his objection, and the same will be heard and determined by the district auditor.

" Dated ——————.

"——————,

" Clerk to the ——— School Board."(*f*)

As may be gathered from the above notice any ratepayer may be present at the audit, and object to the account.(*g*) Every ratepayer of a school district is entitled at all reasonable times without payment to inspect and take copies of and extracts from all books and documents belonging to or under the control of the school board of the district.(*h*) Three clear days before the day appointed for auditing the accounts, the yearly or half-yearly (as the case may be) statements of the accounts and the books of account are to be deposited in the board room of the school board, or such other place as the board may appoint ; and any ratepayer of the district is to be permitted to inspect, examine, and take copies of them at any reasonable hour in the day-time when the board are not sitting.(*i*) Public notice is to be given of the place where the statements and accounts are deposited, and of the times when they may be inspected.(*k*)

The clerk of the school board, or some person authorised by the school board, shall attend the audit, and produce to the auditor all books, bills, vouchers, and documents relating to the accounts.(*l*) These shall at

(*g*) 33 & 34 Vict. c. 75, s. 60 (5).
(*h*) *Ibid.*, s. 37.
(*i*) *School Board Accounts Order* (1880), Art. 20.
(*k*) *Ibid.*, Art. 19.
(*l*) 33 & 34 Vict. c. 75, s. 60 (4). Art. 24 of the School Board

the time of the audit be open to the inspection of any ratepayer interested in the accounts, but to such extent and in such manner only as will not, in the judgment of the district auditor, interfere with the audit.(*a*)

The auditor has, as nearly as may be, the like powers, and is under the like obligation to allow and disallow items in the accounts, and to charge the school board, or any member or officer, or any person accountable to them or him, with any sum for which they or he may be accountable, as in the case of an audit of the accounts relating to the relief of the poor in any union or parish;(*b*) and any person aggrieved by the decision of the auditor has the like rights and remedies.(*c*) The rights and remedies of a person aggrieved are by way of appeal to the Local Government Board or by way of application to the High Court for a writ of *certiorari*.(*d*)

The latter course is very exceptional. This is doubtless so, since the Local Government Board are empowered not only to decide upon the *lawfulness* of the decision of the auditor, but also to exercise an *equitable* jurisdiction.(*e*) In appealing to the Local Government Board the appellant must forward to the Board a copy of the auditor's reasons for making the allowance, disallowance, or surcharge, together with a copy of his certificate of the allowance or surcharge. Also he should set forth in his appeal the facts and reasons which he has to submit in support of it.

The clerk of a school board may be liable to have an illegal expenditure, charged in his petty cash book, disallowed or surcharged, but no pecuniary liability attaches to him for illegal charges in the cash book of the school

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Accounts Order (1880), provides that "the officers of the board, and the managers and officers of the school, who by law are bound to account to the district auditor," are to audit and produce the books, &c.

(*a*) *School Board Accounts Order* (1880), Art. 24.

(*b*) 33 & 34 Vict. c. 75, s. 60 (6); 7 & 8 Vict. c. 101, s. 32; 11 & 12 Vict. c. 91, ss. 5, 8.

(*c*) 33 & 34 Vict. c. 75, s. 60 (6).

(*d*) 7 & 8 Vict. c. 101, ss. 35, 36.

(*e*) 11 & 12 Vict. c. 91, s. 4.

board. The cost of the preparation of an appeal against an auditor's surcharge cannot lawfully be charged upon the funds of the board. Persons who are "aggrieved by any allowance, disallowance, or surcharge by the auditor," should appeal either to the High Court or to the Local Government Board; for if they fail to avail themselves of their remedy, they cannot afterwards, when summoned before a magistrate for the recovery of the amount, set up any objection to the disallowance or surcharge.(*f*)

The auditor has power to require any person holding or accountable for any money, books, deeds, goods, or chattels relating to the school rate, to produce before him his accounts and vouchers, and to make or sign a declaration with respect to them.(*g*) If any person refuses or neglects to comply with such requisition he is liable for every such refusal or neglect to forfeit forty shillings, and if he wilfully make or sign a false declaration in respect of such accounts, he is liable to the penalties of perjury.(*g*)

Any moneys, books, documents, and chattels certified by the auditor to be due from any person must be paid or delivered up within seven days of the same being certified, otherwise the auditor will proceed to enforce payment or delivery.(*h*) Any person refusing to pay the moneys so certified to be due shall, on the application of the auditor or of any person entitled or authorised to receive the same, and any person refusing or neglecting to deliver up any books, deeds, papers, goods, or chattels found to be due shall, on the complaint of the auditor or of the person entitled or authorised to receive the same, be liable, before the justices, to be committed to the common gaol until they have yielded up the same.(*i*)

(*f*) *Reg.* v. *Finnis* (1859), 28 L. J. M. C. 201; 5 Jur. (N.S.) 971.
(*g*) 33 & 34 Vict. c. 75, s. 60 (7); 7 & 8 Vict. c. 101, s. 33.
(*h*) 33 & 34 Vict. c. 75, s. 60 (8).
(*i*) *Ibid.*; 7 & 8 Vict. c. 101, s. 32; 4 & 5 Will. 4, c. 76, ss. 99, 101; 11 & 12 Vict. c. 91, s. 9; 12 & 13 Vict. c. 103, ss. 9, 10; 17 Geo. 2, c. 38.

No proceedings to recover the sums certified to be due are to be commenced after the lapse of nine calendar months from the disallowance or surcharge by the auditor, or in the event of an application by way of appeal against the auditor's decision to the High Court, or to the Local Government Board, after the lapse of nine calendar months from the determination thereon.(*a*)

Any member or officer or manager of a school board who authorises or makes, or concurs in authorising or making, any payment or any entry in accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the school fund, or disallowed or surcharged by any auditor, shall, on summary conviction, be liable to a penalty not exceeding twenty pounds, and double the amount of such sum.(*b*)

When the auditor has completed the audit he is to sign the balance sheet.(*c*) The school board are thereupon to print a statement showing their receipts and expenditure in the form shown in the Accounts Order.(*d*) Within thirty days after the balance sheet has been signed by the auditor they are to send a copy of the statement to each member of the rating authority, to the overseers of every parish in the district,(*c*) to the Local Government Board,(*e*) and to the Education Department(*c*) if the Department call for it.(*f*) They may also, if they think fit, publish the statement or an abstract of it in the local newspapers; and they must furnish a copy of it to any ratepayer in the district on his application, and on the payment of a sum not exceeding sixpence.(*c*)

It only remains to add that the "Local Government Board may from time to time make such regulations as may be necessary respecting the form of keeping the

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(*a*) 12 & 13 Vict. c. 103, s. 9.
(*b*) 33 & 34 Vict. c. 75, s. 61.
(*c*) *Ibid.*, s. 62.
(*d*) *School Board Accounts Order*, 14th July, 1880.
(*e*) *Instructions to School Boards*, August, 1880 (Revised 1891), Art. 26.
(*f*) *Instructions to School Boards*, August, 1880 (Revised 1891), Art. 26.

accounts, the audit thereof, the mode of publishing, the time and place of holding the audit, the time within which the accounts are to be examined by the school board and signed by the chairman, and (with the consent of the Education Department) the school boards or class of school boards, the accounts of which are to be made up only annually, and the day to which they are to be so made up in every year."(*g*)

(*g*) 36 & 37 Vict. c. 86, s. 18.

APPENDIX.

ELEMENTARY EDUCATION ACT, 1870.

33 & 34 VICT. CHAP. 75.

Appndx. *AN ACT to provide for public Elementary Education in England and Wales.* [9th August, 1870.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : (that is to say,)

Preliminary.

Short title

1. This Act may be cited as "The Elementary Education Act, 1870."

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of terms.

3. In this Act—

The term "metropolis" means the places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Management Act, 1855 :

The term "borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same :

The term "parish" means a place for which for the time being a separate poor rate is or can be made :

The term "person" includes a body corporate :

The term "Education Department" means "the Lords of the Committee of the Privy Council on Education" :

[See also Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (6).]

The term "Her Majesty's inspectors" means the inspectors of schools appointed by Her Majesty on the recommendation of the Education Department:

The term "managers" includes all persons who have the management of any elementary school, whether the legal interest in the school-house is or is not vested in them:

The term "teacher" includes assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school:

The term "parent" includes guardian and every person who is liable to maintain or has the actual custody of any child:

The term "elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week:

The term "schoolhouse" includes the teacher's dwelling-house, and the playground (if any) and the offices and all premises belonging to or required for a school:

The term "vestry" means the ratepayers of a parish meeting in vestry according to law:

The term "ratepayer" includes every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated:

The term "parliamentary grant" means a grant made in aid of an elementary school, either annually or otherwise, out of moneys provided by Parliament for the civil service, intituled 'For public education in Great Britain.'

(I.) Local Provision for Schools.

School districts, &c, in schedule.

4. For the purposes of this Act the respective districts, boards, rates and funds, and authorities described in the first schedule to this Act shall be the school district, the school board, the local rate, and the rating authority.

Supply of Schools.

School district to have

5. There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in

Appndx.

sufficient public schools.

such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in manner provided by this Act.

Supply of schools in case of deficiency.

6. Where the Education Department, in the manner provided by this Act, are satisfied and have given public notice that there is an insufficient amount of public school accommodation for any school district, and the deficiency is not supplied as hereinafter required, a school board shall be formed for such district, and shall supply such deficiency, and in case of default by the school board the Education Department shall cause the duty of such board to be performed in manner provided by this Act.

Regulations for conduct of public elementary school.

7. Every elementary school which is conducted in accordance with the following regulations shall be a public elementary school within the meaning of this Act; and every public elementary school shall be conducted in accordance with the following regulations (a copy of which regulations shall be conspicuously put up in every such school); namely,

(1) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs:

(2) The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end or at the beginning and the end of such meeting, and shall be inserted in a time table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every school-room; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school:

(3) The school shall be open at all times to the inspection of any of Her Majesty's inspectors, so, however, that it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book:

(4) The school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant.

Proceedings for Supply of Schools.

Determination by Education Department of deficiency of public school accommodation.

8. For the purpose of determining with respect to every school district the amount of public school accommodation, if any, required for such district, the Education Department shall immediately after the passing of this Act, cause such returns to be made as in this Act mentioned, and on receiving those returns, and after such inquiry, if any, as they think necessary, shall consider whether any and what public school accommodation is required for such district, and in so doing they shall take into consideration every school, whether public elementary or not, and whether actually situated in the school district or not, which in their opinion gives, or will when completed give, efficient elementary education to, and is, or will when completed be, suitable for the children of such district.

Notice by Education Department of public school accommodation required.

9. The Education Department shall publish a notice of their decision as to the public school accommodation for any school district, setting forth with respect to such district the description thereof, the number, size, and description of the schools (if any) available for such district, which the Education Department have taken into consideration as above mentioned, and the amount and description of the public school accommodation, if any, which appears to them to be required for the district, and any other particulars which the Education Department think expedient.

If any persons being either—

(1) Ratepayers of the district, not less than ten, or, if less than ten, being rated to the poor rate upon a rateable value of not less than one-third of the whole rateable value of the district, or,

(2) The managers of any elementary school in the district,

Appndx.

feel aggrieved by such decision, such persons may, within one month after the publication of the notice, apply in writing to the Education Department for, and the Education Department shall direct the holding of, a public inquiry in manner provided by this Act.

At any time after the expiration of such month, if no public inquiry is directed, or after the receipt of the report made after such inquiry, as the case may be, the Education Department may, if they think that the amount of public school accommodation for the district is insufficient, publish a final notice, stating the same particulars as were contained in the former notice, with such modifications (if any) as they think fit to make, and directing that the public school accommodation therein mentioned as required be supplied.

Formation of school board and requisition to provide schools.

10. If after the expiration of a time, not exceeding six months, to be limited by the final notice, the Education Department are satisfied that all the public school accommodation required by the final notice to be supplied has not been so supplied, nor is in course of being supplied with due despatch, the Education Department shall cause a school board to be formed for the district as provided in this Act, and shall send a requisition to the school board so formed requiring them to take proceedings forthwith for supplying the public school accommodation mentioned in the requisition, and the school board shall supply the same accordingly.

Proceedings on default of school board.

11. If the school board fail to comply with the requisition within twelve months after the sending of such requisition in manner aforesaid, they shall be deemed to be in default, and if the Education Department are satisfied that such board are in default they may proceed in manner directed by this Act with respect to a school board in default.

Formation of school boards without inquiry upon application.

12. In the following cases (that is to say),

(1) Where application is made to the Education Department with respect to any school district by the persons who, if there were a school board in that district, would elect the school board, or with respect to any borough, by the council;

(2) Where the Education Department are satisfied that the managers of any elementary school in any school district are unable or unwilling any longer to maintain

such school, and that if the school is discontinued the amount of public school accommodation for such district will be insufficient;

the Education Department may, if they think fit, without making the inquiry or publishing the notices required by this Act before the formation of a school board, but after such inquiry public or other, and such notice as the Education Department think sufficient, cause a school board to be formed for such district, and send a requisition to such school board in the same manner in all respects as if they had published a final notice.

An application for the purposes of this section may be made by a resolution passed by the said electing body after notice published at least a week previously or by the council, and the provisions of the second part of the second schedule to this Act with respect to the passing of such resolution shall be observed.

Proceedings by Education Department after the first year.

13. After the receipt of any returns under this Act subsequently to the first with respect to any school district, and after such inquiry as the Education Department think necessary, the Education Department shall consider whether any and what public school accommodation is required in such district in the same manner as in the case of the first returns under this Act, and where in such district there is no school board acting under this Act they may issue notices and take proceedings in the same manner as they may after the receipt of the first return under this Act, and where there is a school board in such distric they shall proceed in manner directed by this Act.

Management and Maintenance of Schools by School Board.

Management of school by school board.

14. Every school provided by a school board shall be conducted under the control and management of such board in accordance with the following regulations:

(1) The school shall be a public elementary school within the meaning of this Act:

(2) No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school.

Appointment of managers by school board.

15. The school board may, if they think fit, from time to time delegate any of their powers under this Act except the power of raising money, and in particular may delegate the control and management of any school provided by them, with

Appndx.

or without any conditions or restrictions, to a body of managers appointed by them, consisting of not less than three persons.

The school board may from time to time remove all or any of such managers and within the limits allowed by this section add to or diminish the number of or otherwise alter the constitution or powers of any body of managers formed by it under this section.

Any manager appointed under this section may resign on giving written notice to the board. The rules contained in the third schedule to this Act respecting the proceedings of bodies of managers appointed by a school board shall be observed.

Neglect by board of regulations of public elementary schools.

16. If the school board do or permit any act in contravention of or fail to comply with the regulations according to which a school provided by them is required by this Act to be conducted, the Education Department may declare the school board to be and such board shall accordingly be deemed to be a board in default, and the Education Department may proceed accordingly, and every act or omission of any member of the school board, or manager appointed by them, or any person under the control of the board, shall be deemed to be permitted by the board, unless the contrary be proved.

If any dispute arises as to whether the school board have done or permitted any act in contravention of or have failed to comply with the said regulations, the matter shall be referred to the Education Department, whose decision thereon shall be final.

Fees of children.

17. Every child attending a school provided by any school board shall pay such weekly fee as may be prescribed by the school board, with the consent of the Education Department, but the school board may from time to time, for a renewable period not exceeding six months, remit the whole or any part of such fee in the case of any child when they are of opinion that the parent of such child is unable from poverty to pay the same, but such remission shall not be deemed to be parochial relief given to such parent.

Maintenance by school board of schools and sufficient school accommodation.

18. The school board shall maintain and keep efficient every school provided by such board, and shall from time to time provide such additional school accommodation as is, in their opinion, necessary in order to supply a sufficient amount of public school accommodation for their district.

A school board may discontinue any school provided by them, or change the site of any such school, if they satisfy the Educa-

tion Department that the school to be discontinued is unnecessary, or that such change of site is expedient.

If at any time the Education Department are satisfied that a school board have failed to perform their duty, either by not maintaining or keeping efficient every school provided by them, or by not providing such additional school accommodation as in the opinion of the Education Department is necessary in order to supply a sufficient amount of public school accommodation in their district, the Education Department may send them a requisition requiring them to fulfil the duty which they have so failed to perform; and if the school board fail within the time limited by such requisition, not being less than three months, to comply therewith to the satisfaction of the Education Department, such board shall be deemed to be a school board in default, and the Education Department may proceed accordingly.

Powers of school board for providing schools.

19. Every school board for the purpose of providing sufficient public school accommodation for their district, whether in obedience to any requisition or not, may provide, by building or otherwise, school-houses properly fitted up, and improve, enlarge, and fit up any school-houses provided by them, and supply school apparatus and everything necessary for the efficiency of the schools provided by them, and purchase and take on lease any land, and any right over land, or may exercise any of such powers.

Compulsory purchase of sites.

20. With respect to the purchase of land by school boards for the purposes of this Act the following provisions shall have effect; (that is to say),

Regulations as to the purchase of land compulsorily.

(1) The Lands Clauses Consolidation Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions relating to access to the special Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include any right over land:

(2) The school board, before putting in force any of the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, shall—

Publication of notices.

(a) Publish, during three consecutive weeks in the months of October and November, or either of

Appndx.

them, a notice describing shortly the object for which the land is proposed to be taken, naming a place where a plan of the land proposed to be taken may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further,

Service of notices.

(b) After such publication, serve a notice in manner mentioned in this section on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such land;

(c) Such notice shall be served—

(*a*) By delivery of the same personally on the person required to be served, or, if such person is absent abroad, to his agent; or

(*b*) By leaving the same at the usual or last known place of abode of such person as aforesaid or by forwarding the same by post in a registered letter, addressed to the usual or last known place of abode of such person.

Petition to Education Department.

(3) Upon compliance with the provisions contained in this section with respect to notices the school board may, if they think fit, present a petition under their seal to the Education Department, praying that an order may be made authorising the school board to put in force the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, so far as regards the land therein mentioned; the petition shall state the land intended to be taken and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and shall be supported by such evidence as the Education Department may from time to time require:

(4) If, on consideration of the petition and proof of the publication and service of the proper notices, the Education Department think fit to proceed with the case,

they may, if they think fit, appoint some person to inquire in the district in which the land is situate respecting the propriety of the proposed order, and also direct such person to hold a public inquiry:

(5) After such consideration and proof, and after receiving a report made upon any such inquiry, the Education Department may make the order prayed for, authorising the school board to put in force with reference to the land referred to in such order the powers of the said Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as they may think fit, and it shall be the duty of the school board to serve a copy of any order so made in the manner and upon the persons in which and upon whom notices in respect of the land to which the order relates are required by this Act to be served:

No order valid until confirmed by Parliament.

(6) No order so made shall be of any validity unless the same has been confirmed by Act of Parliament; and it shall be lawful for the Education Department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament:

(7) The Education Department, in case of their refusing or modifying such order, may make such order as they think fit for the allowance of the costs, charges, and expenses of any person whose land is proposed to be taken of and incident to such application and inquiry respectively:

Costs how to be defrayed.

(8) All costs, charges, and expenses incurred by the Education Department in relation to any order under this section shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, and all costs, charges, and expenses of any person which shall be so allowed by the Education Department as aforesaid shall, become a charge upon the school fund of the district to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury or to such person respectively, by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be com-

Appndx.

puted from the date of any such direction of the said Commissioners, or allowance of such costs, charges, and expenses respectively upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

The School Sites Acts as defined in the fourth schedule to this Act shall apply in the same manner as if the school board were trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of the Acts mentioned in this section, or partly under one and partly under another Act.

Purchase of land by managers of public elementary school.

21. For the purpose of the purchase by the managers of any public elementary school of a school-house for such school, or a site for the same, "The Lands Clauses Consolidation Act, 1845," and the Acts amending the same (except so much as relates to the purchase of land otherwise than by agreement), shall be incorporated with this Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean such managers, and land shall be construed to include any right over land.

The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever.

Land may be acquired under the Acts incorporated with this section, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.

Any persons desirous of establishing a public elementary school shall be deemed to be managers for the purpose of this section if they obtain the approval of the Education Department to the establishment of such school.

Sale or lease of school-house.

22. The provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity, shall extend to the sale, leasing, and exchange of the whole or any part of any land or school-house belonging to a school board which may not be required by such

board, with this modification, that the Education Department shall for the purposes of this section be deemed to be substituted in those Acts for the Charity Commissioners.

Managers may transfer school to school board.

23. The managers of any elementary school in the district of a school board may, in manner provided by this Act, make an arrangement with the school board for transferring their school to such school board, and the school board may assent to such arrangement.

An arrangement under this section may be made by the managers by a resolution or other act as follows; (that is to say,)

(1) Where there is any instrument declaring the trusts of the school, and such instrument provides any manner in which or any assent with which a resolution or act binding the managers is to be passed or done, then in accordance with the provisions of such instrument:

(2) Where there is no such instrument, or such instrument contains no such provisions, then in the manner and with the assent, if any, in and with which it may be shown to the Education Department to have been usual for a resolution or act binding such managers to be passed or done:

(3) If no manner or assent can be shown to have been usual, then by a resolution passed by a majority of not less than two-thirds of those members of their body who are present at a meeting of the body summoned for the purpose, and vote on the question, and with the assent of any other person whose assent under the circumstances appears to the Education Department to be requisite.

And in every case such arrangement shall be made only—

(1) With the consent of the Education Department; and

(2) If there are annual subscribers to such school, with the consent of a majority, not being less than two-thirds in number, of those of the annual subscribers who are present at a meeting duly summoned for the purpose, and vote on the question.

Provided that where there is any instrument declaring the trusts of the school, and such instrument contains any provision for the alienation of the school by any persons or in any manner

Appndx. or subject to any consent, any arrangement under this section shall be made by the persons in the manner and with the consent so provided.

Where it appears to the Education Department that there is any trustee of the school who is not a manager, they shall cause the managers to serve on such trustee, if his name and address are known, such notice as the Education Department think sufficient; and the Education Department shall consider and have due regard to any objections and representations he may make respecting the proposed transfer.

The Education Department shall consider and have due regard to any objections and representations respecting the proposed transfer which may be made by any person who has contributed to the establishment of such school.

After the expiration of six months from the date of transfer the consent of the Education Department shall be conclusive evidence that the arrangement has been made in conformity with this section.

An arrangement under this section may provide for the absolute conveyance to the school board of all the interest in the school-house possessed by the managers or by any person who is trustee for them or for the school, or for the lease of the same, with or without any restrictions, and either at a nominal rent or otherwise, to the school board, or for the use by the school board of the school-house during part of the week, and for the use of the same by the managers or some other person during the remainder of the week, or for any arrangement that may be agreed on. The arrangement may also provide for the transfer or application of any endowment belonging to the school, or for the school board undertaking to discharge any debt charged on the school not exceeding the value of the interest in the school-house or endowment transferred to them.

When an arrangement is made under this section the managers may, whether the legal interest in the school-house or endowment is vested in them or in some person as trustee for them or the school, convey to the school board all such interest in the school-house and endowment as is vested in them or in such trustee, or such smaller interest as may be required under the arrangement.

Nothing in this section shall authorise the managers to transfer any property which is not vested in them, or a trustee for them, or held in trust for the school; and where any person has any right given him by the trusts of the school to use the school for any particular purpose independently of such managers,

nothing in this section shall authorise any interference with such right except with the consent of such person.

Every school so transferred shall, to such extent and during such times as the school board have under such arrangement any control over the school, be deemed to be a school provided by the school board.

Re-transfer of school by school board to managers.

24. Where any school or any interest therein has been transferred by the managers thereof to the school board of any school district in pursuance of this Act, the school board of such district may, by a resolution passed as hereinafter mentioned, and with the consent of the Education Department, re-transfer such school or such interest therein to a body of managers qualified to hold the same under the trusts of the school as they existed before such transfer to the school board, and upon such re-transfer may convey all the interest in the school-house and in any endowment belonging to the school vested in the school board.

A resolution for the purpose of this section may be passed by a majority of not less than two-thirds of those members of the school board who are present at a meeting duly convened for the purpose, and vote on the question.

The Education Department shall not give their consent to any such re-transfer, unless they are satisfied that any money expended upon such school out of a loan raised by the school board of such district has been, or will, on the completion of the re-transfer, be repaid to the school board.

Every school so re-transferred shall cease to be a school provided by a school board, and shall be held upon the same trusts on which it was held before it was transferred to the school board.

Miscellaneous Powers of School Board.

Payment of school fees.

25. *The school board may, if they think fit, from time to time, for a renewable period not exceeding six months, pay the whole or any part of the school fees payable at any public elementary school by any child resident in their district whose parent is in their opinion unable from poverty to pay the same; but no such payment shall be made or refused on condition of the child attending any public elementary school other than such as may be selected by the parent; and such payment shall not be deemed to be parochial relief given to such parent.*

[This section is repealed by 39 & 40 Vict. c. 79, ss. 10, 52, *post*. See also 43 & 44 Vict. c. 23, s. 5, *post*.]

Appndx.

Establishment of free school in special cases.

26. *If a school board satisfy the Education Department that, on the ground of the poverty of the inhabitants of any place in their district, it is expedient for the interests of education to provide a school at which no fees shall be required from the scholars, the board may, subject to such rules and conditions as the Education Department may prescribe, provide such school, and may admit scholars to such school without requiring any fee.*

[This section is repealed by 54 & 55 Vict. c. 56, s. 11, *post.*]

Contribution to industrial schools. 29 & 30 Vict. c. 118.

27. A school board shall have the same powers of contributing money in the case of an industrial school as is given to a prison authority by section twelve of "The Industrial Schools Act, 1866;" and upon the election of a school board in a borough the council of that borough shall cease to have power to contribute under that section.

Establishment of industrial school.

28. A school board may, with the consent of the Education Department, establish, build, and maintain a certified industrial school within the meaning of the Industrial Schools Act, 1866, and shall for that purpose have the same powers as they have for the purpose of providing sufficient school accommodation for their district: Provided that the school board, so far as regards any such industrial school, shall be subject to the jurisdiction of one of Her Majesty's Principal Secretaries of State in the same manner as the managers of any other industrial school are subject, and such school shall be subject to the provisions of the said Act, and not of this Act.

Constitution of School Boards.

School board.

29. The school board shall be elected in manner provided by this Act,—in a borough by the persons whose names are on the burgess roll of such borough for the time being in force, and in a parish not situate in the metropolis by the ratepayers.

At every such election every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate, or may distribute them among the candidates as he thinks fit.

The school board in the metropolis shall be elected in manner hereinafter provided by this Act.

Constitution of school board.

30. With respect to the constitution of a school board the following provisions shall have effect:

(1) The school board shall be a body corporate, by the name of the school board of the district to which they belong, having a perpetual succession and a common seal, with power to acquire and hold land for the purposes of this Act without any license in mortmain:

(2) No act or proceeding of the school board shall be questioned on account of any vacancy or vacancies in their body:

(3) No disqualification of or defect in the election of any persons or person acting as members or member of the school board shall be deemed to vitiate any proceedings of such board in which they or he have taken part, in cases where the majority of members parties to such proceedings were duly entitled to act:

(4) Any minute made of proceedings at meetings of the school board, if signed by any person purporting to be the chairman of the board, either at the meeting of the board at which such proceedings took place or at the next ensuing meeting of the board, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the school board, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act:

(5) The members of a school board may apply any money in their hands for the purpose of indemnifying themselves against any law costs or damages which they may incur in or in consequence of the execution of the powers granted to them:

(6) The rules contained in the third schedule to this Act with respect to the proceedings of school boards, and the other matters therein contained, shall be observed.

Election of school board.

31. With respect to the election under this Act of a school board, except in the metropolis, the following provisions shall have effect:

(1) The number of members of a school board shall be such number, not less than five nor more than fifteen, as

Appndx.

may be determined in the first instance by the Education Department and afterwards from time to time by a resolution of the school board approved by the Education Department:

(2) The regulations contained in the second schedule to this Act with respect to the election and retirement of the members of the school board, and the other matters therein contained, shall be of the same force as if they were enacted as part of this section:

(3) The Education Department may, at any time after the date at which they are authorised under this Act to cause a school board to be formed, send a requisition to the mayor or other officer or officers who have power to take proceedings for holding the election requiring him or them to take such proceedings, and the mayor or other officer or officers shall comply with such requisition; and in case of default some person appointed by the Education Department may take such proceedings, and shall have for that purpose the same powers as the person in default.

Non-election, &c., of school board.

32. If from any cause in any school district the school board either are not elected at the time fixed for the first election, or at any time cease to be in existence, or to be of sufficient number to form a quorum by reason of non-election, resignation, or otherwise, or neglect or refuse to act, the Education Department may proceed in the same manner as if there were a school board acting in such district, and that board were a board in default.

Determination of disputes as to the election of school boards.

33. *In case any question arises as to the right of any person to act as a member of a school board under this Act, the Education Department may, if they think fit, inquire into the circumstances of the case, and make such order as they deem just for determining the question, and such order shall be final unless removed by writ of* certiorari *during the term next after the making of such order.*

[This section is repealed by the 47 & 48 Vict. c. 70, s. 38.]

Disqualification of member of board.

34. No member of a school board, and no manager appointed by them, shall hold or accept any place of profit the appointment to which is vested in the school board or in any managers appointed by them, nor shall in any way share or be concerned

in the profits of any bargain or contract with or any work done under the authority of such school board or managers appointed by them: Provided they (*sic*) this section shall not apply to—

(1) Any sale of land or loan of money to a school board; or,

(2) Any bargain or contract made with or work done by a company in which such member holds shares;

(3) The insertion of any advertisement relating to the affairs of any such school board in any newspaper in which such member has a share or interest,

if he does not vote with respect to such sale, loan, bargain contract, work, or insertion.

Any person who acts in contravention of this section shall be liable, on summary conviction, to a penalty not exceeding fifty pounds, and the said place of profit and his office as member or manager shall be vacant.

Appointment of officers.

35. A school board may appoint a clerk and a treasurer and other necessary officers, including the teachers required for any school provided by such board, to hold office during the pleasure of the board, and may assign them such salaries or remuneration (if any) as they think fit, and may from time to time remove any of such officers; but no such appointment shall be made, except at the first meeting of such board, unless notice in writing has been sent to every member of the board.

Two or more school boards may arrange for the appointment of the same person to be an officer to both or all such boards.

Such officers shall perform such duties as may be assigned to them by the board or boards who appoint them.

Officer to enforce attendance at school.

36. Every school board may, if they think fit, appoint an officer or officers to enforce any bye-laws under this Act with reference to the attendance of children at school, and to bring children who are liable under the Industrial Schools Act, 1866, to be sent to a certified industrial school before two justices in order to their being so sent, and any expenses incurred under this section may be paid out of the school fund.

School Board in Metropolis.

School board in metropolis.

37. The provisions of this Act with respect to the formation and the election of school boards in boroughs and parishes shall not extend to the metropolis; and with respect to a school

Appndx. board in the metropolis the following provisions shall have effect:

(1) The school board shall consist of such number of members elected by the divisions specified in the fifth schedule to this Act as the Education Department may by order fix:

(2) The Education Department, as soon as may be after the passing of this Act, shall by order determine the boundaries of the said divisions for the purposes of this Act, and the number of members to be elected by each such division:

(3) The provisions of this Act with respect to the constitution of the school board shall extend to the constitution of the school board under this section, and the name of the school board shall be the School Board for London:

(4) The first election of the school board shall take place on such day, as soon as may be after the passing of this Act, as the Education Department may appoint, and subsequent elections shall take place in the month of November every third year on the day from time to time appointed by the school board:

(5) At every election for each division every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected for such division, and may give all such votes to one candidate, or may distribute them among the candidates as he thinks fit:

(6) Subject to the provisions contained in this section and in any order made by the Education Department under the power contained in the second schedule to this Act, the members of the board shall, in the city of London, be elected by the same persons and in the like manner as common councilmen are elected, and in the other divisions of the metropolis shall be elected by the same persons and in the same manner as vestrymen under The Metropolis Management Act, 1855, and the Acts amending the same; and, subject as aforesaid, the Acts relating to the election of common councilmen, and sections fourteen to nineteen, and twenty-one to twenty-seven, all inclusive, of The Metropolis Manage-

ment Act, 1855, and section thirty-six of The Metropolis Management Amendment Act, 1862, shall, so far as is consistent with the tenor thereof, apply in the case of the election of members of the school board:

(7) The school board shall proceed at once to supply their district with sufficient public school accommodation, and any requisition sent by the Education Department to such board may relate to any of the divisions mentioned in the fifth schedule to this Act in like manner as if it were a school district, and it shall not be necessary for the Education Department to publish any notices before sending such requisition:

(8) The Education Department may, in the order fixing the boundaries of such divisions, name some person who shall be the returning officer for the purposes of the first election of the school board, and the person who is to be the deputy returning officer in each such division:

(9) The chairman of the school board shall be elected by the school board, and any chairman who may be elected by the board may be elected either from the members of the board or not, and any chairman who is not an elected member of the board shall, by virtue of his office, be a member of the board as if he had been so elected:

(10) *The school board shall apportion the amount required to be raised to meet the deficiency in the school fund among the different parts of the metropolis mentioned in the third column of the first schedule to this Act in proportion to the rateable value of such parts as shown by the valuation lists for the time being in force under The Valuation (Metropolis) Act,* 1869, *or, if any amount is so required before any such valuation list comes into force, in the same proportion and according to the same basis in and according to which the then last rate made by the Metropolitan Board of Works was assessed*:

[This sub-section is repealed by the 36 & 37 Vict. c. 86, s. 28; see *ibid.*, section 16 for the substituted clause.]

(11) For obtaining payment of the amount specified in any precept sent by the school board to the rating authority for any part of the metropolis, the school board, in

Appndx.

addition to any other powers and remedies, shall have the like powers as the Metropolitan Board of Works have for obtaining payment of any sum assessed by them on the same part of the metropolis.

Payment of chairman.

38. The school board for London may pay to the chairman of such board such salary as they may from time to time, with the sanction of the Education Department, fix.

Alteration of number of members.

39. If at any time application is made to the Education Department by the school board for London, or by any six members of that board, and it is shown to the satisfaction of the Education Department that the population of any of the divisions mentioned in the fifth schedule to this Act, as shown by any census taken under the authority of Parliament, has varied materially from that shown by the previous census, or that the rateable value of any of the said divisions has materially varied from the rateable value of the same division ten years previously, the Education Department, after such inquiry as they think necessary, may, if they think fit, make an order altering, by way of increase or decrease, the number of members of that and any other division.

United School Districts.

Formation by Education Department of united districts.

40. Where the Education Department are of opinion that it would be expedient to form a school district larger than a borough or a parish or any school district formed under this Act, they may, except in the metropolis, by order made after such inquiry and notice as hereinafter mentioned, form a united school district by uniting any two or more adjoining school districts, and upon such union cause a school board to be formed for such united school district.

A united school district shall for all the purposes of this Act be deemed to be a school district, and shall throughout this Act be deemed to be substituted for the school districts out of which it is constituted, and the school board of the united school district shall be the school board appointed under this Act, and the local rate and rating authority for the united district shall be in each of the constituent districts thereof the same as if such constituent district did not form part of the united school district.

Conditions of formation of district.

41. The Education Department, as soon as may be after the passing of this Act, may cause inquiry to be made into the

expediency of uniting any two or more school districts, and if after such inquiry they are of opinion that it would be expedient to unite any such school districts, they shall in the notice of their decision as to the public school accommodation for such districts state that they propose to unite such districts, and the provisions of this Act with respect to the application for a public inquiry by persons aggrieved by the said notice, and to the holding of such public inquiry, and to the final notice, shall apply in the case of the proposed union of districts, with this qualification, that it shall not be necessary to cause a public inquiry to be held with respect to the union of districts until after the expiration of the period allowed by the final notice for the supply of the school accommodation. The order for the union may be made at the time when the Education Department are first authorised to cause a school board to be formed or subsequently. Where a union of districts is proposed the Education Department shall consider whether any public school accommodation is required for the area proposed as the united district instead of for each of the districts constituting such area, and their decision as to the public school accommodation and the notice of such decision shall accordingly refer to such area, and not separately to each of the constituent districts.

As to dissolution of united school district.

42. The Education Department may, by order made after such inquiry and notice as hereinafter mentioned, dissolve a united school district, and may deal with the constituent districts thereof in the same manner as if they had never been united, and may cause school boards to be elected therein.

Public inquiry as to united district in future.

43. The Education Department may at any time, after any proceedings after the first returns under this Act, if they think fit, cause inquiry to be made into the expediency of forming or dissolving a united school district, and where they propose at any time after such inquiry to form or dissolve a united school district, they shall publish notice of the proposed order not less than three months before the order is made ; the like persons as are authorised to apply for a public inquiry after the first returns made under this Act may, if they feel aggrieved by the proposed order, apply in like manner for a public inquiry, and the Education Department shall cause a public inquiry to be held, and shall consider the report made to them upon such inquiry before they make the order for such formation or dissolution.

Appndx.

Order to be evidence of formation or dissolution.

44. Any order of the Education Department forming or dissolving a united district, shall be evidence of the formation or dissolution of such district, and after the expiration of three months from the date of such order the district shall be presumed to have been duly formed or dissolved, as the case may be, and no objection to the formation or dissolution thereof shall be entertained in any legal proceedings whatever.

Constitution of school board in united school district.

45. The provisions in this Act respecting the constitution of the school board shall apply to the constitution of the school board in a united school district, and the name of the district shall be such as may be prescribed by the Education Department.

Election of school board in united school district.

46. In a united school district the school board shall be such number of members elected by the electors of the district as may be specified in the order forming the district, subject nevertheless to alteration in the same manner as in the case of any other school board; and every person who in any of the districts constituting such united district would be entitled if it were not united to vote at the election of members of a school board for such constituent district shall be an elector for the purposes of this section, and the provisions of this Act respecting the election of a school board in a district shall extend to the election of such members.

Arrangements on formation of united district.

47. Where any part of a proposed united school district includes any district or part of a district in which there is a school board already acting under this Act, or where a united school district is dissolved, the Education Department may by order dissolve the then existing school board, or make all necessary changes in the constitution of such existing school board, and may by order make proper arrangements respecting the schools, property, rights, and liabilities of such board, and all arrangements which may be necessary.

As to small parishes.

48. If the Education Department are of opinion that any parish in a united school district has too few ratepayers to be entitled to act as a separate parish for the purposes of this Act, they may by order direct that it shall for the purpose of voting for a member or members of the school board, and for all or any of the purposes of this Act, be added to another parish, and thereupon the persons who would be entitled to vote and attend the vestry if it were a parish shall be entitled for the

purpose of voting and for such purposes to vote in and attend the vestry of the parish to which their parish is so added. All the parishes comprised in a united district, or any two or more of them, may be added together in pursuance of this section.

Contributory Districts.

Contributory district.

49. The Education Department may by order direct that one school district shall contribute towards the provision or maintenance of public elementary schools in another school district or districts, and in such case the former (or contributing district) shall pay to the latter (or school-owning district or districts) such proportion of the expenses of such provision or maintenance or a sum calculated in such manner as the Education Department may from time to time prescribe.

Election of members by contributory district.

50. Where one school district contributes to the provision or maintenance of any school in another school district, such number of persons as the Education Department (having regard to the amount to be contributed by the contributing district) direct shall be elected in the contributing district, and shall be members of the school board of the school-owning district, but such last-mentioned district shall, except so far as regards the raising of money and the attendance of children at school, be deemed alone to be the district of such school board; such members shall be elected by the school board, if any, or if there is none, by the persons who would elect a school board if there were one, in the same manner as a school board would be elected.

Notices and public inquiry as to contributory district.

51. The provisions of this Act with respect to the notices to be published, and the application for and the holding of a public inquiry in the case of an order for the formation of a united district, shall apply, *mutatis mutandis*, to an order respecting a contributory district.

An order respecting a contributory district shall be evidence of the formation of such district, and after the expiration of three months from the date thereof shall be presumed to have been duly made, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Any such order may be revoked or altered by an order of the Education Department, and a new order may be made in lieu thereof, and all the provisions of this Act respecting the

Appndx. making of an order for contribution shall apply to the making of an order for the revocation or alteration of an order for contribution.

Combination of school boards.

52. The school boards of any two or more school districts, with the sanction of the Education Department, may combine together for any purpose relating to elementary schools in such districts, and in particular may combine for the purpose of providing, maintaining, and keeping efficient schools common to such districts. Such agreements may provide for the appointment of a joint body of managers under the provisions of this Act with respect to the appointment of a body of managers, and for the proportion of the contributions to be paid by each school district, and any other matters which, in the opinion of the Education Department, are necessary for carrying out such agreement, and the expenses of such joint body of managers shall be paid in the proportions specified in the agreement by each of the school boards out of their school fund.

Expenses.

School fund of school board.

53. The expenses of the school board under this Act shall be paid out of a fund called the school fund. There shall be carried to the school fund all moneys received as fees from scholars, or out of moneys provided by Parliament, or raised by way of loan, or in any manner whatever received by the school board, and any deficiency shall be raised by the school board as provided by this Act.

Deficiency of school fund raised out of rates.

54. Any sum required to meet any deficiency in the school fund, whether for satisfying past or future liabilities, shall be paid by the rating authority out of the local rate.

The school board may serve their precept on the rating authority, requiring such authority to pay the amount specified therein to the treasurer of the school board out of the local rate, and such rating authority shall pay the same accordingly, and the receipt of such treasurer shall be a good discharge for the amount so paid, and the same shall be carried to the school fund.

If the rating authority have no moneys in their hands in respect of the local rate, they shall, or if they have paid the amount then for the purpose of reimbursing themselves, they may, notwithstanding any limit under any Act of Parliament or otherwise, levy the said rate, or any contributions thereto, or

any increase of the said rate or contributions, and for that purpose shall have the same powers of levying a rate and requiring contributions as they have for the purpose of defraying expenses to which the local rate is ordinarily applicable.

Apportionment of school fund in united and contributory district.

55. In a united district the school board shall apportion the amount required to meet the deficiency in the school fund among the districts constituting such united district in proportion to the rateable value of each such constituent district, and may raise the same by a precept sent to the rating authority of each constituent district.

Where one school district contributes to the expenses of the schools in another school district, the authority of the school-owning district may send their precept either to the school board, if any, or to the rating authority of the contributing district, requiring them to pay to their treasurer the amount therein specified, and such authority or board shall pay the same accordingly, and the receipt of the treasurer shall be a good discharge for the same, and such amount, if paid by the school board, shall be paid out of the school fund.

The precept, if sent to the rating authority, either on the default of the school board or otherwise, shall be deemed to be a precept for meeting a deficiency in the school fund, and the provisions of this Act shall apply accordingly.

Remedy of school board on default of rating authority, &c.

56. In either of the following cases, that is to say,

(1) If the rating authority of any place make default in paying the amount specified in any precept of the school board ; or

(2) Where a school board require to raise a sum from any place which is part of a parish,

then, without prejudice to any other remedy, the school board may appoint an officer or officers to act within such place ; and the officer or officers so from time to time appointed shall have within the said place, for the purpose of defraying the sum due from such place, all the powers of the rating authority of levying the local rate and any contributions thereto, and also all the powers of making and levying a rate which he or they would have if the said place were a parish, and such rate were a rate for the relief of the poor, and he or they were duly appointed an overseer or overseers of such parish, and he and they shall have such access to and use of the documents of

Appndx. the rating authority of such place relative to the local rate and of all the valuation lists and rate books of the parish or parishes comprised in or comprising such place as he or they may require.

Borrowing by school board.

57. *Where a school board incur any expense in providing or enlarging a school-house, they may, with the consent of the Education Department, spread the payment over several years, not exceeding fifty, and may for that purpose borrow money on the security of the school fund and local rate, and may charge that fund and the local rate with the payment of the principal and interest due in respect of the loan. They may, if they so agree with the mortgagee, pay the amount borrowed, with the interest, by equal annual instalments, not exceeding fifty, and if they do not so agree, they shall annually set aside one fiftieth of the sum borrowed as a sinking fund.*

For the purpose of such borrowing the clauses of "The Commissioners Clauses Act, 1847,*" with respect to the mortgages to be executed by the Commissioners, shall be incorporated with this Act; and in the construction of those clauses for the purpose of this Act, this Act shall be deemed to be the special Act, and the school board which is borrowing shall be deemed to be the Commissioners.*

10 & 11 Vict. c. 16.

The Public Works Loan Commissioners may, on the recommendation of the Education Department, lend any money required under this section on the security of the school fund and local rate without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum.

[This section is repealed by the 36 & 37 Vict. c. 86, s. 28; see *ibid.*, s. 10, for the substituted section.]

Borrowing by school board for London.

58. Any sum borrowed by the school board for London in pursuance of this Act, with the approval of the Education Department, may be borrowed from and may be lent by the Metropolitan Board of Works, and section thirty-seven of the Metropolitan Board of Works Loan Act, 1869, shall apply to such loan in the same manner as if the managers therein mentioned were the school board for London, and there were added to the sum therein authorised to be borrowed the sum authorised by the Education Department to be borrowed under this section.

Accounts and Audit.

59. *The accounts of the school board shall be made up and balanced to the twenty-fifth of March and twenty-ninth of September in every year. The accounts shall be examined by the school board and signed by the chairman within fourteen days after the day to which they are made up.*

As soon as practicable after the accounts are so signed they shall be audited.

Accounts to be made up and examined.

[This section is repealed by the 36 & 37 Vict. c. 86, s. 28, *post;* see *ibid.*, s. 17, for the substituted section.]

60. With respect to the audit of accounts of the school board the following provisions shall have effect:

Audit of accounts.

(1) The auditor shall be the auditor of accounts relating to the relief of the poor for the audit district *in which the school district is situate, or if it is situate in more than one audit district by the auditor of such of the said audit districts as the Poor Law Board may direct, and the term audit district in this provision shall be construed to include a parish for which an auditor is separately appointed to audit the accounts for the relief of the poor. The auditor shall receive such remuneration as the Poor Law Board direct, and such remuneration, together with the expenses of or incident to the audit, shall be paid by the school board out of the school fund, and if unpaid may be recovered in a summary manner:*

[So much of this sub-section as is printed in italics is now repealed by the 42 Vict. c. 6, s. 11, which appears *post.*]

(2) The audit shall be held at the office of the school board, or some other place sanctioned by the Poor Law Board within the school district, or within the union within which the school district or some part thereof is situate, and at a time which is fixed by the auditor, but which shall be as soon as may be after the account is signed by the chairman:

(3) The auditor, at least fourteen days before holding the audit, shall serve on the school board, and publish notice of the time and place of holding the same:

Appndx.

(4) The clerk of the school board, or some person authorised by the school board, shall attend the audit, and produce to the auditor all books, bills, vouchers, and documents relating to the account:

(5) Any ratepayer of the school district may be present at the audit, and may object to the account:

(6) The auditor shall, as nearly as may be, have the like powers and be under the like obligation to allow and disallow items in the account, and to charge the school board, or any member or officer thereof, or any person accountable to them or him, with any sum for which they or he may be accountable, as in the case of an audit of the accounts relating to the relief of the poor in any union or parish; and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit:

(7) The auditor shall have the like powers of requiring the attendance of persons, the production of books, bills, vouchers, and documents, and a declaration respecting vouchers and documents, as in the case of such last-mentioned audit; and any person who refuses or neglects to comply with any such requisition, or wilfully makes or signs a false declaration so required, shall be liable to the same penalties as in the case of such last-mentioned audit:

(8) Any moneys, books, documents, and chattels certified by the auditor to be due from any person may be recovered from such person in like manner as in the case of such last-mentioned audit, and the expenses incurred in such recovery shall be deemed to be part of the expenses of the audit:

(9) *Subject to the provisions of this section, the Poor Law Board may from time to time make such regulations as may be necessary respecting the form of keeping the accounts and the audit thereof.*

[This sub-section is repealed by the 36 & 37 Vict. c. 86, s. 23. The substituted section is contained in *ibid.*, s. 18.]

61. Any member or officer of a school board, or manager appointed by them, who authorises or makes, or concurs in authorising or making, any payment or any entry in accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the school fund, or disallowed or surcharged by any auditor, shall, on summary conviction, be liable to pay a penalty not exceeding twenty pounds and double the amount of such sum.

Penalty for improper payment of surcharge.

62. When the auditor has completed the audit he shall sign the balance sheet.

Publication of accounts.

The school board shall cause a statement showing their receipts and expenditure to be printed in such form and with such particulars as may be from time to time prescribed by the Education Department, and shall send the same within thirty days after the balance sheet is signed by the auditor to each member of the rating authority, and to the overseers of every parish in the district, and to the Education Department; and the school board may, if they think fit, publish such statement or an abstract thereof in any local newspaper or newspapers circulating in the district, and shall furnish a copy of such statement to any ratepayer in the district, on his application, and on the payment of a sum not exceeding sixpence.

Defaulting School Board.

63. Where the Education Department are, after such inquiry as they think sufficient, satisfied that a school board is in default as mentioned in this Act, they may by order declare such board to be in default, and by the same or any other order appoint any persons, not less than five or more than fifteen, to be members of such school board, and may from time to time remove any member so appointed, and fill up any vacancy in the number of such members, whether caused by removal, resignation, death, or otherwise, and, subject as aforesaid, add to or diminish the number of such members.

Proceedings on default by school board.

After the date of the order of appointment the persons (if any) who were previously members of the school board shall be deemed to have vacated their offices as if they were dead, but any such member may be appointed a member by the Education Department. The members so appointed by the Education

Appndx.

Department shall be deemed to be members of the school board in the same manner in all respects as if, by election or otherwise, they had duly become members of the school board under the other provisions of this Act, and may perform all the duties and exercise all the powers of the school board under this Act.

The members appointed by the Education Department shall hold office during the pleasure of the Education Department, and when that Department consider that the said default has been remedied, and everything necessary for that purpose has been carried into effect, they may, by order, direct that members be elected for the school board in the same manner as in the case of the first formation of the school board. After the date fixed by any such order the members appointed by the Education Department shall cease to be members of the school board, and the members so elected shall be members of the school board in their room, but the members appointed by the Education Department shall not be disqualified from being so elected. Until any such order is made no person shall become a member of the school board otherwise than by the appointment of the Education Department.

Where a school board is not elected at the time fixed for the first election, or has ceased to be in existence, the Education Department may proceed in the same manner as if such board had been elected and were in existence.

Certificate of Education Department as to appointment, expenses, and loans.

64. The Education Department may from time to time certify the appointment of any persons appointed to be members of a school board in default, and the amount of expenses that have been incurred by such persons, and the amount of any loan required to be raised for the purpose of defraying any expenses so incurred, or estimated as about to be incurred; and such certificate shall be conclusive evidence that all the requirements of this Act have been duly complied with, and that the persons so appointed have been duly appointed, and that the amounts therein mentioned have been incurred or are required.

Expenses incurred on default.

65. The expenses incurred in the performance of their duties by the persons appointed by the Education Department to be members of a school board, including such remuneration (if any) as the Education Department may assign to such persons, shall, together with all expenses incurred by the board, be paid out of the school fund; and any deficiency in the school fund may be raised by the school board as provided by this Act; and where

the Education Department have, either before or after the payment of such expenses, certified that any expenses have been incurred by a school board, or any members appointed by them, such expenses shall be deemed to have been so incurred, and to have been properly paid out of the school fund.

Where the members of a school board have been appointed by the Education Department, such school board shall not borrow or charge the school fund with the principal and interest of any loan exceeding such amount as the Education Department certify as mentioned in this Act to be required.

Dissolution of school boards.

66. Where the Education Department are of opinion that in the case of any school district the school board for such district are in default, or are not properly performing their duties under this Act, they may by order direct that the then members of the school board of such district shall vacate their seats, and that the vacancies shall be filled by a new election; and after the date fixed by any such order the then members of such board shall be deemed to have vacated their seats, and a new election shall be held in the same manner, and the Education Department shall take the same proceedings for the purpose of such election as if it were the first election; and all the provisions of this Act relating to such first election shall apply accordingly.

The Education Department shall cause to be laid before both Houses of Parliament in every year a special report stating the cases in which they have made any order under this section during the preceding year, and their reasons for making such order.

Returns and Inquiry.

Returns by local authority.

67. On or before the first day of January, one thousand eight hundred and seventy-one, or in the case of the metropolis before the expiration of four months from the date of the election of the chairman of the school board, every local authority hereinafter mentioned, and subsequently any such local authority whenever required by the Education Department, but not oftener than once in every year, shall send to the Education Department a return containing such particulars with respect to the elementary schools and children requiring elementary education in their district as the Education Department may from time to time require.

Mode of obtaining returns.

68. For the purpose of obtaining such returns the Education Department shall draw up forms, and supply to the local autho-

Appndx. rity such number of forms as may be required; and the managers or principal teacher of every school required to be included in any such return shall fill up the form, and return the same to the local authority within the time specified in that behalf in the form.

Local authority to make returns.

69. The returns shall be made in the metropolis by the school board appointed under this Act, in boroughs by the council, and in every parish not situated in a borough or the metropolis by persons appointed for the purpose or by the overseers of such parish. Where a school board is formed under this Act, the returns shall be made by such school board within their district, instead of by the council, persons appointed as aforesaid, or overseers, as the case may be.

The persons appointed for the purpose may be appointed as follows; namely, the Education Department may, if they think fit, send to the overseers or other officers who have power to summon a vestry in such parish a requisition to summon, and such overseers or other officers shall summon, a vestry in such parish for the purpose of this section; and such vestry shall appoint two or more persons who shall be the local authority for the purpose of the returns under this Act.

The local authority may, with the sanction of the Education Department, employ persons to assist in making such returns, and may pay those persons such remuneration as the Treasury may sanction. That remuneration, and all such other reasonable expenses incurred by the local authority in making such returns as the Treasury may sanction, shall be paid by the Education Department.

Proceedings on default of authority to make returns.

70. If any local authority fail to make the returns required under this Act, the Education Department may appoint any person or persons to make such returns, and the person or persons so appointed shall for that purpose have the same powers and authorities as the local authority.

Inquiry by inspectors of Education Department.

71. The Education Department may appoint any persons to act as inspectors of returns, who shall proceed to inquire into the accuracy and completeness of any one or more returns made in pursuance of this Act, and into the efficiency and suitability of any school mentioned in any such return, or which ought to have been mentioned therein, and to inspect and examine the scholars in every such school. Where there is no return the inspector shall proceed as if there had been a defective return.

72. If the managers or teacher of any school refuse or neglect to fill up the form required for the said return, or refuse to allow the inspector to inspect the school-house or examine any scholar, or examine the school books and registers, or make copies or extracts therefrom, such school shall not be taken into consideration among the schools giving efficient elementary education to the district.

Refusal to fill up forms and to admit inspectors.

Public Inquiry.

73. Where a public inquiry is held in pursuance of the provisions of this Act the following provisions shall have effect :

Public inquiry.

(1) The Education Department shall appoint some person who shall proceed to hold the inquiry :

(2) The person so appointed shall for that purpose hold a sitting or sittings in some convenient place in the neighbourhood of the school district to which the subject of inquiry relates, and thereat shall hear, receive, and examine any evidence and information offered, and hear and inquire into any objections or representations made respecting the subject of the inquiry, with power from time to time to adjourn any sitting.

Notice shall be published in such manner as the Education Department direct of every such sitting (except an adjourned sitting) seven days at least before the holding thereof:

(3) The person so appointed shall make a report in writing to the Education Department setting forth the result of the inquiry, and stating his opinion on the subject thereof, and his reasons for such opinion, and the objections and representations, if any, made on the inquiry, and his opinion thereon ; and the Education Department shall cause a copy of such report to be deposited with the school board (if any), or, if there is none, the town clerk of the borough, or the churchwardens or overseers of the parishes to which the inquiry relates, and notice of such deposit to be published :

(4) The Education Department may make an order directing that the costs of the proceedings and inquiry shall be paid, according as they think just, either by the district as if they were expenses of a school board, or by the

Appndx.

applicants for the inquiry; and such costs may be recovered, in the former case, as a debt due from the school board, or, if there is no school board, as a debt due from the rating authority, and in the case of the applicants, as a debt due jointly and severally from them; and the Education Department may, if they think fit, before ordering the inquiry to be held, require the applicants to give security for such expenses, and in case of their refusal may refuse to order the inquiry to be held.

Attendance at School.

As to attendance of children at school.

74. Every school board may from time to time, with the approval of the Education Department, make bye-laws for all or any of the following purposes:

(1) Requiring the parents of children of such age, not less than five years nor more than thirteen years, as may be fixed by the bye-laws, to cause such children (unless there is some reasonable excuse) to attend school:

(2) Determining the time during which children are so to attend school; provided that no such bye-laws shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, or shall be contrary to anything contained in any Act for regulating the education of children employed in labour:

(3) Providing for the remission or payment of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same:

(4) Imposing penalties for the breach of any bye-laws:

(5) Revoking or altering any bye-law previously made.

Provided that any bye-law under this section requiring a child between ten and thirteen years of age to attend school shall provide for the total or partial exemption of such child from the obligation to attend school if one of Her Majesty's inspectors certifies that such child has reached a standard of education specified in such bye-law. Any of the following reasons shall be a reasonable excuse; namely,

(1) That the child is under efficient instruction in some other manner:

(2) That the child has been prevented from attending school by sickness or any unavoidable cause:

(3) That there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of such child, as the bye-laws may prescribe.

The school board, not less than one month before submitting any bye-law under this section for the approval of the Education Department, shall deposit a printed copy of the proposed bye-laws at their office for inspection by any ratepayer, and supply a printed copy thereof gratis to any ratepayer, and shall publish a notice of such deposit.

The Education Department before approving of any bye-laws shall be satisfied that such deposit has been made and notice published, and shall cause such inquiry to be made in the school district as they think requisite.

Any proceeding to enforce any bye-law may be taken, and any penalty for the breach of any bye-law may be recovered, in a summary manner; but no penalty imposed for the breach of any bye-law shall exceed such amount as with the costs will amount to five shillings for each offence, and such bye-laws shall not come into operation until they have been sanctioned by Her Majesty in Council.

It shall be lawful for Her Majesty, by Order in Council, to sanction the said bye-laws, and thereupon the same shall have effect as if they were enacted in this Act.

All bye-laws sanctioned by Her Majesty in Council under this section shall be set out in an appendix to the annual report of the Education Department.

Miscellaneous.

Application of small endowments.

75. Where any school or any endowment of a school was excepted from The Endowed Schools Act, 1869, on the ground that such school was at the commencement of that Act in receipt of an annual parliamentary grant, the governing body (as defined by that Act) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment.

Appndx.

The Education Department may approve such scheme with or without any modifications as they think fit.

The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under The Endowed Schools Act, 1869; and such scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that Act.

A certificate of the Education Department that a school was at the commencement of The Endowed Schools Act, 1869, in receipt of an annual parliamentary grant shall be conclusive evidence of that fact for all purposes.

Inspection of voluntary schools by inspector not one of Her Majesty's inspectors.

76. Where the managers of any public elementary school not provided by a school board desire to have their school inspected or the scholars therein examined, as well in respect of religious as of other subjects, by an inspector other than one of Her Majesty's inspectors, such managers may fix a day or days not exceeding two in any one year for such inspection or examination.

The managers shall, not less than fourteen days before any day so fixed, cause public notice of the day to be given in the school, and notice in writing of such day to be conspicuously affixed in the school.

On any such day any religious observance may be practised, and any instruction in religious subjects given at any time during the meeting of the school, but any scholar who has been withdrawn by his parent from any religious observance or instruction in religious subjects shall not be required to attend the school on any such day.

Parish divided by boundaries of boroughs.

77. Where a parish is situated partly within and partly without a borough, the part situate outside of the borough shall be taken to be for all the purposes of this Act, except as otherwise expressly mentioned, a parish by itself, and the ratepayers thereof may meet in vestry in the same manner in all respects as if they were the inhabitants of a parish; every such meeting, and also the meeting for the purposes of this Act of the ratepayers of any parish (the ratepayers of which have not usually met in vestry), shall be deemed to be a vestry, and, save as provided by this Act, be subject to the Act of the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, and the Acts amending the same, and, subject as aforesaid, shall be summoned by the persons and in the mode prescribed by the Education Department; and the overseers of

the whole parish shall be deemed to be the overseers of any such part of a parish.

Education Department may apply to Charity Commissioners under 16 & 17 Vict. c. 137, &c.

78. The Education Department shall, for the purposes of The Charitable Trusts Acts, 1853 to 1869, be deemed to be persons interested in any elementary school to which those Acts are applicable, and the endowment thereof.

Ascertaining rateable value.

79. The rateable value of any parish or school district shall for the purposes of this Act be the rateable value as stated in the valuation lists, if any, and if there are none, then as stated in the rate book for the time being in force in such parish and in the parishes constituting the district; and the overseers and other persons having the custody of such valuation lists and rate book shall, when required by the school board, produce such lists and rate book to the school board, and allow the school board and any person appointed by them to inspect the same, and take copies of (*sic*) or extracts therefrom.

Mode of publication of notices.

80. *Notices and other matters required by this Act to be published shall, unless otherwise expressly provided, be published,—*

(1) *By advertisement in some one or more of the newspapers circulating in the district or place to which such notice relates:*

(2) *By causing a copy of such notices or other matters to be published to be affixed, during not less than twelve hours in the day, on Sunday on or near the principal doors of every church and chapel in such district or place to which notices are usually affixed, and at every other place in such district or place at which notices are usually affixed.*

[This section is repealed by the 36 & 37 Vict. c. 86, s. 28, *post.* For the substituted section see *ibid.*, s. 20.]

Notices may be served by post.

81. Certificates, notices, requisitions, orders, precepts, and all documents required by this Act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, till the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the certificate, notice, requisition,

Appndx. order, precept, or document was prepaid, and properly addressed, and put into the post.

Notices to and by school board.

82. Certificates, notices, requisitions, orders, and other documents may be served on a school board by serving the same on their clerk, or by sending the same to or delivering the same at the office of such board.

Certificates, notices, requisitions, orders, precepts, and other documents may be in writing or in print, or partly in writing and partly in print, and if requiring authentication by a school board may be signed by their clerk.

Evidence of orders, &c., of Education Department.

83. All orders, minutes, certificates, notices, requisitions, and documents of the Education Department, if purporting to be signed by some secretary or assistant secretary of the Education Department, shall, until the contrary is proved, be deemed to have been so signed and to have been made by the Education Department, and may be proved by the production of a copy thereof purporting to have been so signed.

The Documentary Evidence Act, 1868, shall apply to the Education Department in like manner as if the Education Department were mentioned in the first column of the schedule to that Act, and any member of the Education Department, or any secretary or assistant secretary of the Education Department, were mentioned in the second column of that schedule.

[See also the 45 & 46 Vict. c. 9.]

Effect of requisitions of Education Department.

84. After the expiration of three months from the date of any order or requisition of the Education Department under this Act such order or requisition shall be presumed to have been duly made, and to be within the powers of this Act and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Appearance of school board.

85. A school board may appear in all legal proceedings by their clerk, or by some member of the board authorised by a resolution of the board; and every such resolution shall appear upon the minutes of the proceedings of the board, but every such resolution shall, until the contrary is proved, be deemed in any legal proceeding to appear upon such minutes.

Tenure of teacher, and his

86. The provisions of the Schools (*sic*) Sites Acts with respect to the tenure of the office of the schoolmaster or schoolmistress,

and to the recovery of possession of any premises held over by a master or mistress who has been dismissed or ceased to hold office, shall extend to the case of any school provided by a school board, and of any master or mistress of such school, in the same manner as if the school board were the trustees or managers of the school as mentioned in those Acts.

removal from house under sects. 17 and 18 of 4 & 5 Vict. c. 38.

87. Every ratepayer in a school district may at all reasonable times, without payment, inspect and take copies of and extracts from all books and documents belonging to or under the control of the school board of such district.

Ratepayer may inspect books, &c., of school board.

Any person who hinders a ratepayer from so inspecting or taking copies of or extracts from any book or document, or demands a fee for allowing him so to do, shall be liable, on summary conviction, to a penalty not exceeding five pounds for each offence.

88. If any returning officer, clerk, or other person engaged in an election of a school board under this Act wilfully makes or causes to be made an incorrect return of the votes given at such election, every such offender shall, upon summary conviction, be liable to a penalty not exceeding fifty pounds.

Penalty for making incorrect return.

89. *If any person wilfully personates any person entitled to vote in the election of a school board under this Act, or answers falsely any question put to him in voting in pursuance of an order made under the second schedule to this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, he shall be liable, on summary conviction, for every such offence to a penalty not exceeding twenty pounds.*

Penalty on personation of voter.

[This section is repealed by the 36 & 37 Vict. c. 86, s. 28.]

90. If any person [*knowingly personate and falsely assume to vote in the name of any person entitled to vote in any election under this Act, or forge or in any way falsify any name or writing in any paper purporting to contain the vote or votes of any person voting in any such election, or*] by any contrivance attempt to obstruct or prevent the purposes of any such election, or wilfully contravene any regulation made by the Education Department under the second schedule to this Act with respect to the election, the contravention of which is expressed to involve a penalty, the person so offending shall upon summary conviction be liable to a penalty of not more than fifty pounds, and in

Penalty for forging or falsifying any voting paper or obstructing the election.

Appndx. default of payment thereof to be imprisoned for a term not exceeding six months.

[The words of this section printed in italics are repealed by the 36 & 37 Vict. c. 86, s. 28. See section 23 of that Act for the recovery of penalties.]

Corrupt practices.

91. Any person who at the election of any member of a school board or any officer appointed for the purpose of such election is guilty of corrupt practices shall, on conviction, for each offence, be liable to a penalty not exceeding two pounds, and be disqualified for the term of six years after such election from exercising any franchise at any election under this Act, or at any municipal or parliamentary election.

The term corrupt practices in this section includes all bribery, treating, and undue influence which under any Act relating to a parliamentary election renders such election void.

Recovery of penalties.

92. Any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner, may be recovered and taken before two justices in manner directed by an Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and the Acts amending the same.

11 & 12 Vict. c. 43.

Provision as to Oxford.

93. In the case of the borough of Oxford, the provisions of this Act relating to boroughs shall be construed as if the local board were therein mentioned instead of the council; if a school board is formed in the borough of Oxford, one-third of the school board shall be elected by the University of Oxford, or the colleges and halls therein, in such manner as may be directed by the Education Department by an order made under the power contained in the second schedule to this Act.

Effect of schedules.

94. The schedules to this Act shall be of the same force as if they were enacted in this Act, and the Acts mentioned in the fourth schedule to this Act may be cited in the manner in that schedule mentioned.

Returns by school board.

95. Every school board shall make such report and returns and give such information to the Education Department as the department may from time to time require.

(II.) PARLIAMENTARY GRANT.

Parliamentary grant to public elementary school only.

96. After the thirty-first day of March, one thousand eight hundred and seventy-one, no parliamentary grant shall be made to any elementary school which is not a public elementary school within the meaning of this Act.

No parliamentary grant shall be made in aid of building, enlarging, improving, or fitting up any elementary school, except in pursuance of a memorial duly signed, and containing the information required by the Education Department for enabling them to decide on the application, and sent to the Education Department on or before the thirty-first day of December, one thousand eight hundred and seventy.

Conditions of annual parliamentary grant.

97. The conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant shall be those contained in the minutes of the Education Department in force for the time being, and shall amongst other matters provide that after the thirty-first day of March, one thousand eight hundred and seventy-one—

(1) Such grant shall not be made in respect of any instruction in religious subjects:

(2) *Such grant shall not for any year exceed the income of the school for that year which was derived from voluntary contributions, and from school fees, and from any sources other than the parliamentary grant;*

but such conditions shall not require that the school shall be in connexion with a religious denomination, nor that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground that it is or is not provided by a school board:

Provided that where the school board satisfy the Education Department that in any year ending the twenty-ninth of September the sum required for the purpose of the annual expenses of the school board of any school district, and actually paid to the treasurer of such board by the rating authority, amounted to a sum which would have been raised by a rate of threepence in the pound on the rateable value of such district, and any such rate would have produced less than twenty pounds, or less than seven shillings and sixpence per child of the number of children in average attendance at the public elementary schools provided by such school board, such school board shall be entitled,

Appndx. in addition to the annual parliamentary grant in aid of the public elementary schools provided by them, to such further sum out of moneys provided by Parliament as, when added to the sum actually so paid by the rating authority, would, as the case may be, make up the sum of twenty pounds, or the sum of seven shillings and sixpence for each such child, but no attendance shall be reckoned for the purpose of calculating such average attendance unless it is an attendance as defined in the said minutes:

Provided that no such minute of the Education Department not in force at the time of the passing of this Act shall be deemed to be in force until it has lain for not less than one month on the table of both Houses of Parliament.

[The words in this section printed in italics are repealed by the 39 & 40 Vict. c. 79, s. 19, *post.*]

Refusal of grant to unnecessary schools.

98. If the managers of any school which is situate in the district of a school board acting under this Act, and is not previously in receipt of an annual parliamentary grant, whether such managers are a school board or not, apply to the Education Department for a parliamentary grant, the Education Department may, if they think that such school is unnecessary, refuse such application.

The Education Department shall cause to be laid before both Houses of Parliament in every year a special report stating the cases in which they have refused a grant under this section during the preceding year, and their reasons for each such refusal.

Power of schools to take parliamentary grants.

99. The managers of every elementary school shall have power to fulfil the conditions required in pursuance of this Act to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provisions contained in any instrument regulating the trusts or management of their school, and to apply such grant accordingly.

Report.

Annual report of Education Department.

100. The Education Department shall in every year cause to be laid before both Houses of Parliament a report of their proceedings under this Act during the preceding year.

FIRST SCHEDULE.

School District.	School Board.	Local Rate.	Rating Authority.
The Metropolis.	The school board appointed under this Act.	In the City of London the consolidated rate.	The commissioners of sewers.
		In the parishes mentioned in schedule A. and the districts mentioned in schedule B. to the Metropolis Management Act, 1855, the general rate, and fund raised by the general rate.	In the parishes the vestry, and in the districts the district board.
		In places mentioned in schedule C. to the said Act, the rate levied for the purposes of the Metropolitan Poor Act, 1867, and any Act amending the same.	The masters of the bench, treasurer, governors, or other persons who have the chief control or authority in such place.
Boroughs, except Oxford.	The school board appointed under this Act.	The borough fund or borough rate.	The council.
District of the local board of Oxford.	The school board appointed under this Act.	Rate leviable by the local board.	The local board.
Parishes not included in any of the above-mentioned districts.	The school board appointed under this Act.	The poor rate.	The overseers.

THE SECOND SCHEDULE.

FIRST PART.

Rules respecting Election and Retirement of Members of a School Board.

1. *The election of a school board shall be held at such time, and in such manner, and in accordance with such regulations as the Education Department may from time to time by order prescribe, and the Education Department may by order appoint or direct the appointment of any officers requisite for the purpose of such election, and do all other necessary things preliminary or incidental to such election: Provided, that any poll shall be taken in the metropolis in like manner as a poll is taken under "The Metropolis Management Act*, 1855," *and shall be taken in any other district in like manner as a poll of burgesses or ratepayers (as the case may be) is usually taken in such district.*

[This rule is repealed by 36 & 37 Vict. c. 86, s. 28, *post*; see *ibid.*, s. 6.]

2. The expenses of the election and taking the poll in any district other than the metropolis shall be paid by the school board out of the school fund.

[Though it is not necessary that the person employed as returning officer should be a solicitor, yet if he be one, the school board may have his bill taxed in the usual way before paying it: *In re Jones* (1872), L. R. 13 Eq. 336.]

3. *An order made by the Education Department under the power contained in this part of this schedule shall, as regards any election held before the first day of September, one thousand eight hundred and seventy-one, be deemed to be within the powers of this schedule, and to have been duly made and have effect as if it were enacted in this schedule, but shall not be of any force as regards any election after the said date unless it has been confirmed by Parliament.*

[This rule is repealed by 36 & 37 Vict. c. 86, s. 28, *post*; see *ibid.*, s. 6.]

4. Any such order so far as relates to the metropolis shall supersede any provisions contained in the Acts relating to the election of common councilmen, and in the Metropolis Management Act, 1855, and the Acts amending the same.

5. If from any cause no members are elected at the time at which they ought to be elected in accordance with this Act, then—

(*a.*) In the case of the first election the Education Department may appoint another day for the election, or may proceed as in the case of a school board in default:

(*b.*) In the case of a triennial election the retiring members, or so many as are willing to serve, shall be deemed to be re-elected, or, if all the retiring members refuse to serve, the Education Department may appoint another day for the election, or may proceed as in the case of a school board in default.

6. If an insufficient number of members are elected, or if, in the case of no members being elected, some of the retiring members are and some are not willing to serve, the school board, so far as it is constituted, shall elect a person to fill each vacancy.

7. No election under this Act shall be questioned on the ground of the title of the returning officer, or any person presiding at the poll, or any officer connected with the election.

8. Notice of the election of a person to be a member of the school board shall be sent to that person by the returning officer: in the case of the first election such notice shall be accompanied by a summons to attend the first meeting of the school board at the prescribed time.

9. The day for the triennial retirement of members shall be the prescribed day.

10. The first members shall retire from office on the day for retirement which comes next after the expiration of three years from the day fixed for the first election.

11. Members chosen to fill the offices of retiring members shall come into office on the day for retirement, and shall hold office for three years only.

12. Any person who ceases to be a member of the school board shall, unless disqualified as hereinafter mentioned, be re-eligible.

13. A member of the school board may resign on giving to the board one month's previous notice in writing of his intention so to do.

Appndx.

14. If a member of the school board absents himself during six successive months from all meetings of the board, except from temporary illness or other cause to be approved by the board, or is punished with imprisonment for any crime, or is adjudged bankrupt, or enters into a composition or arrangement with his creditors, such person shall cease to be a member of the school board, and his office shall thereupon be vacant.

[See *Reg.* v. *Turmine* (1878), 4 Q. B. D. 78, and *Conybeare* v. *London School Board* (1890), 1 Q. B. 118, *ante*, p. 20.]

15. *If any casual vacancy in office occurs by death, resignation, disqualification, or otherwise, an election shall be held in manner directed by an order made under the power contained in this part of this schedule.*

[This rule is repealed by 39 & 40 Vict. c. 79, s. 52, sched. 4, *post*. See also section 44 and schedule 3 of that Act.]

16. If by any means the number of members of a school board is reduced to less than the number required for a quorum, the Education Department may proceed as if such board were a board in default, or may direct an election to be held to fill up the vacancies in manner directed by an order made under the power contained in this part of this schedule.

17. The member chosen to fill up a casual vacancy shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

18. If the number of the board is reduced in pursuance of the provisions of this Act, the chairman of the board shall at some meeting, as soon as may be after such reduction, determine by ballot on the members who shall retire, so as to reduce the number of the board to the number to which it is so reduced.

19. The term "prescribed" in this schedule means prescribed by some minute or order of the Education Department.

Second Part.

Rules respecting Resolutions for Application for School Board.

1. The meeting of a council for the purpose of passing such a resolution shall be summoned in the manner in which a meeting of the council is ordinarily summoned, and the resolution shall be passed by a majority of the members present and voting on the question.

2. The resolution passed by the persons who would elect the school board shall be passed in like manner as near as may be as that in which a member of the school board is elected, with such necessary modifications as may be contained in any order made under the powers of the first part of this schedule, and such powers shall extend to the passing of the resolution in like manner as if it were an election, but the expenses incurred with reference to such a resolution shall be paid by the overseers out of the poor rate.

3. If a resolution is rejected, the resolution shall not be again proposed until the lapse of twelve months from the date of such rejection.

THIRD PART.

Rules for Election of School Board in Metropolis.

1. If any person be returned for more than one division he shall, at or before the first meeting of the school board after such election, signify in writing to the board his decision as to the division which he may desire to represent on such return, and if he fails so to do the school board shall decide the division which he shall represent; and upon any such decision the office of member for the other division shall be deemed vacant. Such vacancy shall be filled up by an election to be held in manner directed by an order made under the power contained in the first part of this schedule.

[See note to rule 6, *infra*, as to filling up a casual vacancy.]

2. The provisions in the first part of this schedule shall apply in the case of the school board in the metropolis.

3. The provisions in the first part of this schedule with respect to the proceedings in the case of no members being elected for a school district shall not only apply to the whole of the metropolis, but shall apply to the case of no members being elected for any particular division, with this qualification, that the Education Department shall not proceed as in the case of a school board in default, but may direct that persons may be elected by the school board to be members for such division.

4. In the places named in Schedule (C.) to "The Metropolis Management Act, 1855," the expenses of the election shall be paid out of the local rate, and such rate, or any increase of the rate, may be levied for the purpose.

Appndx.

5. The day for the retirement of members from office shall be the first day of December.

6. *Any casual election shall be held on the day fixed by the school board, and shall be an election for the division a member for which has created a vacancy.*

[This rule is repealed by 39 & 40 Vict. c. 79, s. 52, *post*. As to elections to fill casual vacancies, see 36 & 37 Vict. c. 86, sched. 2, r. 2, and 39 & 40 Vict. c. 79, sched. 3, *post*.]

7. If any vacancy is filled up by the school board the election shall be by the whole school board.

THIRD SCHEDULE.

Proceedings of School Board.

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:

(*a.*) The first meeting shall be held on the third Thursday after the election of the board, and if not held on that day shall be held on some day to be fixed by the Education Department.

(*b.*) *Not less than one ordinary meeting shall be held in each month; one meeting shall be held as soon as possible after every triennial election of members.*

[This rule (*b.*) is repealed by 36 & 37 Vict. c. 86, s. 28. For the substituted provision, see section 21 and schedule 3 (*b.*) of that Act.]

(*c.*) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the clerk of the board.

(*d.*) The quorum to be fixed by the board shall consist of not less than three members, and in the case of the metropolis not less than nine members.

(*e.*) Every question shall be decided by a majority of votes of the members present and voting on that question.

(*f.*) *The names of the members present, as well as of those voting upon each question, shall be recorded.*

(*g.*) *No business involving the appointment or dismissal of a teacher, any new expense, or any payment (except the ordinary periodical payments), or any business which under this Act requires the consent of the Education Department, shall be transacted unless notice in writing of such business has been sent to every member of the board seven days at least before the meeting.*

[Rules (*f.*) and (*g.*) are repealed by the 36 & 37 Vict. c. 86, s. 28. For the substituted provisions, see section 21 and schedule 3 (*f.*) and (*g.*) of that Act, *post.*]

2. The board shall at their first meeting, and afterwards from time to time at their first meeting after each triennial election, appoint some person to be chairman, and one other person to be vice-chairman, for the three years for which the board hold office.

3. If any casual vacancy occurs in the office of chairman or vice-chairman the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose one of their members to fill such vacancy, and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.

4. If at any meeting the chairman is not present at the time appointed for holding the same the vice-chairman shall be the chairman of the meeting, and if neither the chairman or (*sic*) vice-chairman shall be present then the members present shall choose some one of their number to be chairman of such meeting.

5. In case of an equality of votes at any meeting the chairman for the time being of such meeting shall have a second or casting vote.

6. All orders of the board for payment of money, and all precepts issued by the board, shall be deemed to be duly executed if signed by two or more members of the board authorised to sign them by a resolution of the board, and countersigned by

Appndx. the clerk; but in any legal proceeding it shall be presumed, until the contrary is proved, that the members signing any such order or precept were authorised to sign them (*sic*).

7. The appointment of any officer of the board may be made by a minute of the board, signed by the chairman of the board, and countersigned by the clerk (if any) of the board, and any appointment so made shall be as valid as if it were made under the seal of the board.

8. Precepts of the board may be in the form given at the end of this schedule.

Proceedings of Managers appointed by a School Board.

The managers may elect a chairman of their meetings. If no such chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. The managers may meet and adjourn as they think proper. The quorum of the managers shall consist of such number of members as may be prescribed by the school board that appointed them, or, if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question, and in case of an equal division of votes the chairman shall have a second or casting vote.

The proceedings of the managers shall not be invalidated by any vacancy or vacancies in their number.

Form of Precept.

School district of to wit.

To the council [*or* overseers, &c.] of the borough [*or* parish] of . These are to require you, the council [*or* overseers] of the borough [*or* parish] of , from and out of the moneys in the hands of your treasurer [*or* your hands], to pay on or before the day of into the hands of *A.B.*, treasurer of the school board of the said district, the sum of , being the amount required for the expenses of the said school board up to the of 18 ; and if there are no moneys in the hands of your treasurer [*or* your hands] to raise the same by means of a rate.

(Signed)
C.D., } Members of the school board of
E.F., } the district of .
G.H., clerk of the said school board.

FOURTH SCHEDULE.

School Sites Acts.

The following Acts may be cited together as the "School Sites Acts, 1841 to 1851":—

Year and Chapter of Act.	Title of Act.	Short Title by which Acts may be cited.
4 & 5 Vict. c. 38.	An Act to afford further facilities for the conveyance and endowment of sites for schools.	The School Sites Act, 1841.
7 & 8 Vict. c. 37.	An Act to secure the terms on which grants are made by Her Majesty out of the Parliamentary grant for the education of the poor; and to explain the Act of the fifth year of Her present Majesty, for the conveyance of sites for schools.	The School Sites Act, 1844.
12 & 13 Vict. c. 49.	An Act to extend and explain the provisions of the Acts for the granting of sites for schools.	The School Sites Act, 1849.
14 & 15 Vict. c. 24.	An Act to amend the Acts for the granting of sites for schools.	The School Sites Act, 1851.

FIFTH SCHEDULE.

Divisions of Metropolis.

Name of Division.	Name of Division.
Marylebone.	Westminster.
Finsbury.	Southwark.
Lambeth.	City.
Tower Hamlets.	Chelsea.
Hackney.	Greenwich.

[The Division of Lambeth has been sub-divided into Lambeth West and East: see *ante*, p. 35, and 48 & 49 Vict. 38, s. 2, post.]

ELEMENTARY EDUCATION ACT, 1873.

36 & 37 VICT. CHAP. 86.

AN ACT to amend the Elementary Education Act (1870), *and for other purposes connected therewith.*

[5th August, 1873.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title. 33 & 34 Vict. c. 75.

1. This Act may be cited as the Elementary Education Act, 1873 ; and this Act and the Elementary Education Act, 1870 (in this Act referred to as the principal Act), may be cited together as the Elementary Education Acts, 1870 and 1873.

Construction of Act.

2. This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to include this Act.

Expenses of Education.

Repeal of 18 & 19, Vict. c. 34. (Denison's Act), and substitution of other provisions.

3. *The Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter thirty-four, intituled "An Act to provide for the education of children in the receipt of out-door relief," is hereby repealed as from the first day of January, one thousand eight hundred and seventy-four ; and in lieu thereof be it enacted as follows :*

Where relief out of the workhouse is given by the guardians or their order by way of weekly or other continuing allowance to the parent of any child between five and thirteen years of age, or to any such child, it shall be a condition for the continuance of such relief that elementary education in reading, writing, and arithmetic shall (unless either there is some reasonable excuse within the meaning of section seventy-four of the principal Act, or the child has reached such standard of education as may from time to time be fixed for the purpose of

this Act, so far as regards any district in which bye-laws under section seventy-four of the principal Act are in force by any such bye-law, and in any other district by a minute of the Education Department, or the child is employed in pursuance of a certificate under "The Agricultural Children Act, 1873," *and is not attending school) be provided for such child, and the guardians shall give such further relief (if any) as may be necessary for that purpose.*

Any such relief to a parent as above-mentioned shall not be granted or refused on condition of the child attending any public elementary school other than such as may be selected by the parent.

The guardians shall not have power under this section to give any relief to a parent in order to enable such parent to pay more than the ordinary fee payable at the school which he selects, or more than one farthing for each attendance at such school, as defined by the minutes of the Education Department for the time being in force with respect to the Government grant.

All relief given by guardians under this section shall be paid out of their common fund, and where given by the guardians of any union in the metropolis as defined by the Metropolitan Poor Act, 1867, *shall be deemed to be expenses repayable from the Metropolitan Common Poor Fund, within the meaning of section sixty-nine of that Act, and shall be repaid to such guardians accordingly.*

30 & 31 Vict. c. 6.

[This section is repealed by the 39 & 40 Vict. c. 75, s. 52, *post*, and is adapted by section 40 of that Act.]

Power of Local Government Board as to relief and guardians.

4. *The Local Government Board shall have the like powers with respect to guardians acting under and relief given in pursuance of this Act, as they have with respect to guardians acting under and relief given in pursuance of the Acts relating to the relief of the poor, and relief given in pursuance of this Act shall be deemed to be relief within the meaning of those Acts.*

[This section is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Elections.

Confirmation of

5. The orders and regulations of the Education Department mentioned in the first schedule to this Act, and all orders of the

Appndx.

Orders as to elections, &c.

Education Department incorporating the said orders or regulations, so far as they so incorporate them, are hereby confirmed, and shall be deemed to have been duly made, and to have been within the powers contained in the principal Act, and shall continue in force until revoked or altered by any order made under the provisions of the principal Act as amended by this Act.

Election of school board.

6. The principal Act shall be construed as if there were substituted for the rules numbered one and three in the first part of the second schedule to the principal Act the rules in the second schedule to this Act, and the references in the principal Act to the second schedule to that Act, or the first part of that schedule, shall be construed to refer to the said schedule or the first part thereof, with the provisions so substituted; *but the said substitution shall not affect anything done before the passing of this Act.*

[The words in italics are repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Overseers to allow inspection of rate books and otherwise assist returning officers.

7. If any overseer or other officer has in his possession or under his control any rate book or other document which under the Elementary Education Acts, 1870 and 1873, or any order made thereunder, constitutes the register of persons entitled to vote at an election of a school board, or at the passing of a resolution for an application for a school board, and such overseer or other officer refuses or fails to comply with the directions of any order of the Education Department confirmed by this Act, or made in pursuance of the Elementary Education Acts, 1870 and 1873, with respect to the production, inspection, or copying of such book or document, or the assisting any returning officer at any such election or passing of a resolution, such overseer or officer shall be liable, on summary conviction, to a penalty not exceeding five pounds for every day during which he so refuses or fails.

Amendment of 33 & 34 Vict. c. 75, s. 91, as to corrupt practices at elections.

8. Every person who under the principal Act is disqualified by a conviction for corrupt practices at any election from exercising any franchise for any term of years shall be also disqualified during the same term of years from being a member of a school board and from holding any municipal office.

Questioning of election and resolution.

9. The election of any member of a school board, and the passing of a resolution for an application for a school board under the Elementary Education Acts, 1870 and 1873, shall not

be questioned except within six months after the declaration of the election of such member or of the passing of such resolution, whether such declaration was made before or after the passing of this Act.

Miscellaneous Amendments of 33 & 34 *Vict. c.* 75.

10. The principal Act and Acts referring thereto shall be construed as if, for section fifty-seven, which is repealed by this Act, there were substituted the following section :

Amendment of 33 & 34 Vict. c. 75, s. 57, as to loans.

Where a school board have incurred or require to incur any expense, either—

(*a.*) In providing or enlarging a schoolhouse ; or

(*b.*) In paying off any debt charged on a schoolhouse provided by them, or on any land acquired by them by gift, transfer, purchase, or otherwise for the purposes of this Act ; or

(*c.*) In any works of improving or fitting up a schoolhouse which, in the opinion of the Education Department, ought by reason of the permanent character of such works to be spread over a term of years,

they may, with the consent of the Education Department, spread the payment over such number of years not exceeding fifty, as may be sanctioned by the Education Department, and may, with the like consent, for that purpose borrow money on security of the school fund and local rate, and may charge that fund and the local rate with the payment of the principal and interest due in respect of the loan. They may, if they so agree with the mortgagee, pay the amount borrowed with the interest by equal annual instalments not exceeding fifty, and if they do not so agree they shall annually set aside one-fiftieth of the sum borrowed as a sinking fund: Provided that no such consent of the Education Department shall be granted unless proof be given to their satisfaction that the additional school accommodation which it is proposed to supply is required in order to provide for the educational wants of the district:

For the purpose of such borrowing the clauses of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act ; and in the construction of those

10 & 11 Vict. c. 16.

Appndx.

clauses for the purpose of this Act, this Act shall be deemed to be the special Act, and the school board which is borrowing shall be deemed to be the commissioners:

The Public Works Loan Commissioners may, on the recommendation of the Education Department, lend any money required under this section on the security of the school fund and local rate without requiring any further or other security, such loan to be repaid within such number of years not exceeding fifty, as may be recommended by the Education Department, and to bear interest at the rate of three and-a-half per cent. per annum.

The said substitution shall not affect anything done before the passing of this Act, except that anything done before the passing of this Act which would have been legal if the said substitution had been made shall be legal.

[The words in italics are repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Amendment of 33 & 34 Vict. c. 75, ss. 12, 40.

11. The provisions of section twelve of the principal Act shall extend to authorise the Education Department, if they think fit, to form a united school district, and upon such union to cause a school board to be formed for such united school district, in like manner and under the like circumstances as it authorises them to cause a school board to be formed for any school district, without making the inquiry or publishing the notices required by the principal Act, but after such inquiry, public or other, and such notice as the Education Department think sufficient: Provided that a resolution in favour of union shall be passed in each district separately, and if a school board has been elected in any such district, by the school board.

Union of detached parts of parishes for purposes of Act.

12. Where any part of a parish is detached from the principal part of a parish, the Education Department may, with the consent of the Local Government Board, by order direct that each such part of the said parish shall, and the same shall accordingly, as from the date of the order or any later date specified in the order, be, for the purposes of the principal Act and this Act, a parish by itself, and section fifty-seven of the principal Act shall apply thereto in like manner as if such part of a parish were the part of a parish situate outside a borough.

The provisions of section fifty-six of the principal Act,

with respect to raising a sum from any place which is part of a parish, shall, where necessary, apply to a part of a parish, although under this section it is deemed to be a parish by itself.

Power of school board to accept gifts for educational purposes.

13. A school board shall be able and be deemed always to have been able to be constituted trustees for any educational endowment or charity for purposes connected with education, whether such endowment or charity was established before or after the passing of the principal Act, and to have and always to have had power to accept any real or personal property given to them as an educational endowment or upon trust for any purposes connected with education: Provided that—

(1) Nothing in this section shall enable a school board to be trustees for or accept any educational endowment, charity, or trust, the purposes of which are inconsistent with the principles on which the school board are required by section fourteen of the principal Act to conduct schools provided by them; and

(2) Every school connected with such endowment, charity, or trust shall be deemed to be a school provided by the school board, except that nothing in this section shall authorise the school board to expend any money out of the local rate for any purpose other than elementary education; and

(3) Nothing in this section shall affect the law of mortmain or the Act of the ninth year of the reign of King George the Second, chapter thirty-six.

Amendment of 29 & 30 Vict. c. 118, s. 12, as applied to school boards.

14. Where a school board exercises the powers of a prison authority under the Industrial Schools Act, 1866, not less than fourteen days, instead of not less than two months, previous notice shall be given of the intention of the school board to take into consideration the making of the contribution mentioned in section twelve of that Act.

Amendment of 33 & 34 Vict. c. 75, s. 20.

15. For the purpose of the purchase of land otherwise than by agreement under section twenty of the principal Act, the Act confirming an order of the Education Department for such purchase, together with the principal Act shall be deemed to be the special Act.

Appndx.

Valuation list in metropolis.

16. The principal Act shall be construed as if there were substituted for sub-section ten of section thirty-seven thereof the following words :

The school board shall apportion the amount required to be raised to meet the deficiency in the school fund among the different parts of the metropolis mentioned in the third column of the first schedule to this Act, in proportion to the rateable value of such parts, as shown by the valuation lists for the time being in force under the Valuation (Metropolis) Act, 1869, or any other Act for making valuation lists, or, where there is no such valuation list, in the same proportion and according to the same basis in and according to which the then last rate made by the Metropolitan Board of Works was assessed.

The said substitution shall not affect anything done before the passing of this Act, except that anything done before the passing of this Act which would have been legal if the said substitution had been made shall be legal.

[The paragraph in italics is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Making up and examination of account.

17. The accounts of a school board shall be made up and balanced to the twenty-fifth day of March and twenty-ninth day of September in every year, or, if so directed by regulation under this Act, annually to one of those days in every year.

The accounts shall be examined by the school board and signed by the chairman within such time, not exceeding two months after the day to which they are made up, as may be fixed by a regulation under this Act.

As soon as practicable after the accounts are so signed they shall be audited.

Amendment of 33 & 34 Vict. c. 75, s. 60.

18. The principal Act shall be construed as if for sub-section nine of section sixty thereof there were substituted the following words :

Subject to the provisions of this section, the Local Government Board may from time to time make such regulations as may be necessary respecting the form of keeping the accounts, the audit thereof, the mode of publishing the time and place of holding the audit, the time within which the accounts are to be examined by the school board and signed by the chairman, and (with the consent of the Education Department) the school boards or class of school boards,

the accounts of which are to be made up only annually, and the day to which they are to be so made up in every year.

The said substitution shall not affect anything done before the passing of this Act, except that anything done before the passing of this Act which would have been legal if the said substitution had been made, shall be legal.

[The paragraph in italics is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Extension of 33 & 34 Vict. c. 75, s. 70, to returns.

19. Where the Education Department have power under the principal Act to require any local authority to send to them a return, the Education Department, without requiring such local authority to make the return, shall have the same power of appointing a person or persons to make such return as they would have under section seventy of the principal Act if the local authority had been required to make and had failed to make such return.

Notices for purposes of Elementary Education Acts.

20. Notices and other matters required by the Elementary Education Acts, 1870 and 1873, to be published shall, unless otherwise expressly provided, be published either by advertisement, and by affixing the same on the doors of churches and chapels, and other public places, or in such other manner as the Education Department may either generally or with respect to any particular district, place, or notice, or class of districts, places, or notices, by order determine, as being in their opinion sufficient for giving information to all persons interested; and all overseers, assistant overseers, and officers of guardians shall comply with the directions of the Education Department with respect to such notices, and any expenses incurred by them in carrying into effect this section may be paid as their expenses under the Acts relating to the relief of the poor.

Every person who wilfully tears down, injures, or defaces any notice affixed in pursuance of the Elementary Education Acts, 1870 and 1873, or any order of the Education Department made thereunder, shall be liable on summary conviction to a penalty not exceeding forty shillings.

Amendment of 33 & 34 Vict. c. 75, 3rd sched.

21. The regulations in the third schedule to this Act shall be substituted for the regulations in the third schedule to the principal Act which are repealed by this Act, *but such substitution shall not affect anything done before the passing of this Act.*

[The words in italics are repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39.)]

Appndx.

Returns by schools to school boards.

22. In any school district in which a bye-law under section seventy-four of the principal Act is in force, the school board of such district may from time to time supply forms to any public elementary school for the purpose of obtaining reasonable information with respect to the attendance of children residing in their district who attend such school; and the managers of such school, if they fail to cause such forms to be truly filled up and returned in manner required by the school board, or to cause such information to be given as will enable the school board to ascertain whether a child resident within their district and attending that school attends the same in manner required by the said bye-law, shall cause to be produced to such member or officer of the school board or other person as may be duly authorised in that behalf by the school board at any reasonable time when required by him, the registers and other books and documents containing information with respect to the attendance of children at such school, and shall permit him to inspect and take copies of and extracts from the same.

If any difference arises between a school board and the managers of a public elementary school as to whether the information required by the said forms is or is not reasonable, such difference shall be referred to the Education Department, whose decision shall be final.

Legal Proceedings.

Legal proceedings.

23. All offences and penalties under the principal Act or this Act, or any bye-law under the principal Act, which may be prosecuted or recovered on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

The court of summary jurisdiction, when hearing and determining an information or complaint, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Regulations as to legal proceedings.

24. With respect to proceedings before a court of summary jurisdiction for offences and penalties under the principal Act, or this Act, or any bye-law under the principal Act, the following provisions shall have effect:

(1) *The description of the offence in the words of the Act or bye-law, or as near thereto as may be, shall be sufficient in law:*

(2) *Any exception, exemption, proviso, excuse, or qualification, whether it does or (sic) not accompany the description of the offence in the Act or bye-law, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived no proof in relation to the matters so specified or negatived shall be required on the part of the informant:*

[Sub-sections (1) and (2) are repealed by the Statute Law Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

(3) In any proceeding for an offence under a bye-law, the court may, instead of inflicting a penalty, make an order directing that the child shall attend school, and that if he fail so to do, the person on whom such order is made shall pay a penalty not exceeding the penalty to which he is liable for failing to comply with the bye-law:

(4) Any justice may require by summons any parent or employer of a child, required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the court, to comply with such summons shall be liable to a penalty not exceeding twenty shillings:

(5) A certificate purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or stating the particulars of the attendance of a child at such school, or stating that a child has been certified by one of Her Majesty's inspectors to have reached a particular standard of education, shall be evidence of the facts stated in such certificate:

(6) Where a child is apparently of the age alleged for the purposes of the proceeding, it shall lie on the defendant to prove that the child is not of such age:

(7) If a child is attending an elementary school which is not a public elementary school, it shall lie on the defendant to show that the school is efficient, and the court, in considering whether any elementary school is efficient,

Appndx.

shall have regard to the age of the child and to the standard of education corresponding to such age prescribed by the minutes of the Education Department for the time being in force with respect to the parliamentary grant:

(8) Where a school board are, by reason of the default of the managers or proprietor of an elementary school, unable to ascertain whether a child who is resident within the district of such school board and attends such school attends school in conformity with a bye-law made by such school board, it shall lie on the defendant to show that the child has attended school in conformity with the bye-law:

(9) Any person may appear by any member of his family or any other person authorised by him in this behalf.

Forgery of certificate, and giving false information.

25. Every person who forges or counterfeits any certificate which is by this Act made evidence of any matter, or gives or signs any such certificate which is to his knowledge false in any material particular, or, knowing any such certificate to be forged, counterfeit, or false, makes use thereof, shall be liable on summary conviction to imprisonment for a period not exceeding three months, with or without hard labour.

Definitions and Repeal.

Schedules part of Act.

26. The schedules to this Act shall be of the same force as if they were enacted in the body of this Act.

Interpretation.

27. In this Act—

"Guardians."

The term "guardians" includes any body of persons performing the functions of guardians within the meaning of the Acts relating to the relief of the poor:

"Union."

The term "union" means any union or incorporation of parishes under any general or local Act, and any single parish having guardians as defined by this Act under any general or local Act:

"Common fund."

The term "common fund" means, in the case of a union which comprises only one parish, the fund applicable to the relief of the poor of such parish:

"Summary Jurisdiction Acts."

The term "the Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign

of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same:

"Court of summary jurisdiction."

The term "court of summary jurisdiction" means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts.

Repeal and savings.

28. *The principal Act is hereby repealed, to the extent specified in the third column of the fourth schedule to this Act.*

Provided that—

(1) *Any order or regulation of the Education Department made under any enactment hereby repealed shall continue in force as if it had been made under this Act:*

(2) *Any school board elected under any enactment hereby repealed shall continue and be deemed to have been elected under this Act:*

(3) *The repeal of any Act or enactment by this Act shall not—*

(a.) *Affect anything duly done or suffered under any such Act or enactment; or*

(b.) *Affect any right, privilege, obligation, or liability acquired, accrued or incurred under any such Act or enactment, or bye-law; or*

(c.) *Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any such Act, enactment, or bye-law; or*

(d.) *Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.*

[This section is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Appndx.

FIRST SCHEDULE.

Orders and Regulations of the Education Department relating to Elections of and Applications for School Boards.

7th October, 1870.	Order fixing the boundaries of the divisions of the metropolis, with the number of members to be elected by each division, and appointing the returning officer for the first election of the school board for London and his deputies.
27th October, 1870.	Order regulating the first election of the school board for London.
27th October, 1870.	General regulations for the first election of school boards in boroughs.
21st December, 1870.	General regulations for the first election of school boards in parishes not situate within municipal boroughs, or within the metropolis.
21st December, 1870.	General regulations as to passing resolutions for application for school boards in parishes not situate within municipal boroughs or within the metropolis.
6th January, 1871.	Regulations for the first election of a school board for the district of the local board of Oxford.
15th March, 1873.	General regulations as to the formation of united school districts.

SECOND SCHEDULE.

Rules respecting Election of Members of a School Board.

(1) The election of a school board shall be held at such time and in such manner and in accordance with such regulations as the Education Department may from time to time by order prescribe; and the Education Department may by order appoint or direct the appointment and make regulations as to the duties, remuneration, and expenses of any officers requisite for the purpose of such election, and do and make regulations respecting all other necessary things preliminary or incidental to such election, and revoke or alter any previous order, whether confirmed by or made in pursuance of this Act. 35 & 36 Vict. c. 33.

Provided as follows:

(*a.*) The candidates at every election shall be nominated in writing:

(*b.*) Any poll shall, so far as circumstances admit, be conducted in like manner in which the poll at a contested municipal election is directed by the Ballot Act, 1872, to be conducted; and subject to any exceptions or modifications contained in any order of the Education Department made in pursuance of this Act, the Ballot Act, 1872, shall apply in the case of the election of a school board in like manner as if the provisions thereof were herein enacted with the substitution of "school board election" for "municipal election:"

(*c.*) In a parish which is not situate in the city of London or in a borough, other than the borough of Oxford, the book containing the last rate made for such parish more than one month previously to any date shall be the register of the ratepayers entitled to vote in such parish at that date; and every ratepayer whose name appears in such rate book shall be entitled to vote unless he is disqualified for voting, and no person shall be entitled to vote whose name does not so appear.

(2) Elections to fill casual vacancies in the metropolis and elsewhere shall be held only on the day in the year appointed or prescribed for the election of members, unless the Education Department order an election to be held on some other day, in

Appndx. pursuance of the rule numbered sixteen in the first part of the second schedule to the principal Act.

(3) An order made in pursuance of this schedule shall, save as otherwise provided by such order, apply to all school boards.

THIRD SCHEDULE.

Proceedings of School Board.

The following regulations shall be construed a (*sic*) part of the conditions mentioned in rule one in the third schedule to the principal Act; that is to say,

(*b.*) Not less than one ordinary meeting shall be held in each month, but where the board ordinarily meet more than once in every month, they may, by resolution passed by a majority of not less than two-thirds of the members present and voting on the question, resolve not to have an ordinary meeting in the months of August and September, or one of such months. One meeting shall be held as soon as possible after every triennial election of members:

(*f.*) The names of the members present, and in the case of a division the names of those voting upon each question shall be recorded:

(*g.*) No business involving the appointment or dismissal of a teacher, any new expense, or any payment (except the ordinary periodical payments), or any business which under this Act requires the consent of the Education Department, shall be transacted unless notice in writing of such business has been sent to every member four days at least before the meeting.

FOURTH SCHEDULE.

Act repealed.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	The sub-section numbered ten in section thirty-seven; section fifty-seven; section fifty-nine; the sub-section numbered nine in section sixty; sections eighty and eighty-nine; section ninety, from "knowingly personate" to "voting in any such election or;" the rules numbered one and three in the first part of the second schedule; so much of the rule numbered six in the third part of the second schedule as relates to fixing a day for a casual election, and the conditions in rule one of the third schedule marked (*b.*) (*f.*) and (*g.*).

[This schedule is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

ELEMENTARY EDUCATION ACT, 1876.

39 & 40 VICT. CHAP. 79.

AN ACT to make further provision for Elementary Education. [15th August, 1876.]

WHEREAS it is expedient to make further provision for the education of children, and for securing the fulfilment of parental responsibility in relation thereto, and otherwise to amend and to extend the Elementary Education Acts :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This Act may be cited as the "Elementary Education Act, 1876."

Extent of Act.

2. This Act shall not, save as otherwise expressly provided, apply to Scotland or Ireland.

Commencement of Act.

3. This Act shall, save as otherwise expressly provided, come into operation on the first day of January, one thousand eight hundred and seventy-seven (which day is in this Act referred to as the commencement of this Act).

PART I.

Law as to Employment and Education of Children.

Declaration of duty of parent to educate child.

4. It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act.

Regulation as to employment of child under 10, and

5. A person shall not, after the commencement of this Act, take into his employment (except as hereinafter in this Act mentioned) any child—

(1) Who is under the age of ten years ; or

(2) Who, being of the age of ten years or upwards, has not obtained such certificate either of his proficiency in reading, writing, and elementary arithmetic, or of previous due attendance at a certified efficient school, as is in this Act in that behalf mentioned, unless such child, being of the age of ten years or upwards, is employed, and is attending school in accordance with the provisions of the Factory Acts, or of any bye-law of the local authority (hereinafter mentioned) made under section seventy-four of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1873, and this Act, and sanctioned by the Education Department.

certificate of education or previous school attendance being condition of employment of child over 10.

6. Every person who takes a child into his employment in contravention of this Act, shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

Penalty for employing a child in contravention of Act.

7. The provisions of this Act respecting the employment of children shall be enforced—

(1) In a school district within the jurisdiction of a school board, by that Board; and

(2) In every other school district by a committee (in this Act referred to as a school attendance committee) appointed annually, if it is a borough, by the council of the borough, and, if it is a parish, by the guardians of the union comprising such parish.

Enforcement of Act by school board or school attendance committee of existing local authority or by inspectors of factories or mines.

A school attendance committee under this section may consist of not less than six nor more than twelve members of the council or guardians appointing the committee, so, however, that, in the case of a committee appointed by guardians, one-third at least shall consist of ex-officio guardians, if there are any and sufficient ex-officio guardians.

Every such school board and school attendance committee (in this Act referred to as the local authority) shall, as soon as may be, publish the provisions of this Act within their jurisdiction in such manner as they think best calculated for making those provisions known.

Provided that it shall be the duty of the inspectors and sub-inspectors acting under the Acts regulating factories, workshops, and mines respectively, and not of the local authority, to enforce the observance by the employers of children in such factories, workshops, and mines, of the provisions of this Act respecting

Appndx.

the employment of children; but it shall be the duty of the local authority to assist the said inspectors and sub-inspectors in the performance of their duty by information and otherwise.

It shall be the duty of such local authority to report to the Education Department any infraction of the provisions of section seven of the Elementary Education Act, 1870, in any public elementary school within their district which may come to their knowledge, and also to forward to the Education Department any complaint which they may receive of the infraction of those provisions.

Employment and education of children in factories, &c.

8. *Whereas by sections fourteen and fifteen of the Workshop Regulation Act*, 1867, *provision is made respecting the education of children employed in workshops, and it is expedient to substitute for the said sections the provisions respecting education of the Factory Acts*, 1844 *and* 1874: *Be it therefore enacted, that sections thirty-one, thirty-eight, and thirty-nine of the Factory Act*, 1844, *and sections twelve and fifteen of the Factory Act*, 1874, *shall apply to the employment and education of all children employed in factories subject to the Factory Acts*, 1833 *to* 1871, *and not subject to the Factory Act*, 1874, *or in workshops subject to the Workshop Acts*, 1867 *to* 1871.

Provided that section twelve of the Factory Act, 1874, *shall not apply to any child so employed who has attained the age of eleven years before the commencement of this Act.*

[This section is repealed by the Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), s. 107.]

Exception to prohibition of employment of children.

9. A person shall not be deemed to have taken any child into his employment contrary to the provisions of this Act, if it is proved to the satisfaction of the court having cognizance of the case either—

(1) That during the employment there is not within two miles, measured according to the nearest road, from the residence of such child any public elementary school open which the child can attend; or

(2) That such employment, by reason of being during the school holidays, or during the hours during which the school is not open, or otherwise, does not interfere with the efficient elementary instruction of such child, and that the child obtains such instruction by regular

attendance for full time at a certified efficient school or in some other equally efficient manner; or

(3) That the employment is exempted by the notice of the local authority hereinafter next mentioned; (that is to say,)

The local authority may, if it thinks fit, issue a notice exempting from the prohibitions and restrictions of this Act the employment of children above the age of eight years, for the necessary operations of husbandry and the ingathering of crops, for the period to be named in such notice: Provided that the period or periods so named by any such local authority shall not exceed in the whole six weeks between the first day of January and the thirty-first day of December in any year.

The local authority shall cause a copy of every notice so issued to be sent to the Education Department and to the overseers of every parish within its jurisdiction, and the overseers shall cause such notice to be affixed to the door of all churches and chapels in the parish and the local authority may further advertise any such notice in such manner (if any) as it may think fit.

Payment of school fees for poor parents.

10. The parent, not being a pauper, of any child who is unable by reason of poverty to pay the ordinary fee for such child at a public elementary school, or any part of such fee, may apply to the guardians having jurisdiction in the parish in which he resides; and it shall be the duty of such guardians, if satisfied of such inability, to pay the said fee, not exceeding threepence a week, or such part thereof as he is, in the opinion of the guardians, so unable to pay.

The parent shall not by reason of any payment made under this section be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification.

Payment under this section shall not be made on condition of the child attending any public elementary school other than such as may be selected by the parent, nor refused because the child attends, or does not attend any particular public elementary school.

The twenty-fifth section of the Elementary Education Act, 1870, *is hereby repealed.*

[The paragraph in italics is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Appndx.

Provision as to order of court for attendance at school of child habitually neglected by parent or habitually wandering and consorting with criminals or disorderly persons.

11. If either—

(1) The parent of any child above the age of five years who is under this Act prohibited from being taken into full time employment, habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child ; or

(2) Any child is found habitually wandering or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals ;

it shall be the duty of the local authority, after due warning to the parent of such child, to complain to a court of summary jurisdiction, and such court may, if satisfied of the truth of such complaint, order that the child do attend some certified efficient school willing to receive him and named in the order, being either such as the parent may select, or, if he do not select any, then such public elementary school as the court think expedient, and the child shall attend that school every time that the school is open, or in such other regular manner as is specified in the order.

An order under this section is in this Act referred to as an attendance order.

Any of the following reasons shall be a reasonable excuse :—

(1) That there is not within two miles, measured according to the nearest road, from the residence of such child any public elementary school open which the child can attend ; or

(2) That the absence of the child from school has been caused by sickness or any unavoidable cause.

Proceedings on disobedience to order of court for attendance at school.

12. Where an attendance order is not complied with, without any reasonable excuse within the meaning of this Act, a court of summary jurisdiction, on complaint made by the local authority, may, if it think fit, order as follows :

(1) In the first case of non-compliance, if the parent of the child does not appear, or appears and fails to satisfy the court that he has used all reasonable efforts to enforce compliance with the order, the court may impose a penalty not exceeding with the costs five shillings ; but if the parent satisfies the court that he has used all reasonable efforts as aforesaid, the court may, without inflicting a penalty, order the child to be sent to a certified day industrial school, or if it appears to the

court that there is no such school suitable for the child, then to a certified industrial school; and

(2) In the second or any subsequent case of non-compliance with the order, the court may order the child to be sent to a certified day industrial school, or if it appears to the court that there is no such school suitable for the child then to a certified industrial school, and may further in its discretion inflict any such penalty as aforesaid, or it may for each such non-compliance inflict any such penalty as aforesaid without ordering the child to be sent to an industrial school:

Provided that a complaint under this section with respect to a continuing non-compliance with any attendance order shall not be repeated by the local authority at any less interval than two weeks.

A child shall be sent to a certified industrial school or certified day industrial school in pursuance of this section in like manner as if sent in pursuance of the Industrial Schools Act, 1866, and when so sent shall be deemed to have been sent in pursuance of that Act and the Acts amending the same; and the parent, if liable under the said Acts to contribute to the maintenance and training of his child when sent to an industrial school, shall be liable so to contribute when his child is sent in pursuance of this section.

29 & 30 Vict. c. 118.

13. Where the local authority are informed by any person of any child in their jurisdiction who is stated by that person to be liable to be ordered by a court under this Act to attend school, or to be sent under this Act, or the Industrial Schools Act, 1866, to an industrial school, it shall be the duty of the local authority to take proceedings under this Act or the Industrial Schools Act, 1866, accordingly, unless the local authority think that it is inexpedient to take such proceedings.

Duty of local authority as to taking proceedings under this Act or 29 & 30 Vict. c. 118.

Provided that nothing in this section shall relieve the local authority from the responsibility of performing their duty under the other provisions of this Act.

Industrial School.

14. Where a child is sent to a certified industrial school under this Act or the Industrial Schools Act, 1866, upon the complaint or representation of the local authority under this Act, the managers of such school may, if they think fit, at any time after the expiration of one month after the child is so sent give him

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Appndx.

a license under section twenty-seven of the Industrial Schools Act, 1866, to live out of the school, but the license shall be conditional upon the child attending as a day scholar, in such regular manner as is specified in the license, some school willing to receive him and named in the license, and being a certified efficient school.

Amendment as to provision of industrial school by school board.

15. The consent of one of Her Majesty's Principal Secretaries of State, and not of the Education Department, shall be required for the establishing, building, and maintaining of a certified industrial or certified day industrial school by a school board, and to the spreading of the payment of the expense of such establishment and building over a number of years not exceeding fifty, and to the borrowing of money for that purpose; and for the purpose of such borrowing section ten of the Elementary Education Act, 1873, shall be held to apply to the loan in like manner as if one of Her Majesty's Principal Secretaries of State were substituted therein for the Education Department, and such establishment and building shall be deemed to be a work for which a school board is authorised to borrow within the meaning of the First Schedule to the Public Works Loans Act, 1875.

Day Industrial School.

Establishment, &c., of day industrial schools.

16. If a Secretary of State is satisfied that, owing to the circumstances of any class of population in any school district, a school in which industrial training, elementary education, and one or more meals a day, but not lodging, are provided for the children, is necessary or expedient for the proper training and control of the children of such class, he may, in like manner as under the Industrial Schools Act, 1866, certify any such school (in this Act referred to as a day industrial school) in the neighbourhood of the said population to be a certified day industrial school.

Any child authorised by the Industrial Schools Act, 1866, to be sent to a certified industrial school, may, if the court before whom the child is brought think it expedient, be sent to a certified day industrial school; any child sent to a certified day industrial school by an order of a court (other than an attendance order under this Act) may during the period specified in the order be there detained during such hours as may be authorised by the rules of the school approved by the said Secretary of State.

A certified day industrial school shall be deemed to be a certified efficient school within the meaning of this Act.

In the case of a certified day industrial school,—

(1) A prison authority within the meaning of the Industrial Schools Act, 1866, and a school board shall respectively have the same powers in relation to a certified day industrial school as they have in relation to a certified industrial school; and

(2) There may be contributed out of moneys provided by Parliament towards the custody, industrial training, elementary education, and meals of children sent by an order of a court other than an attendance order under this Act to a certified day industrial school such sums not exceeding one shilling per head per week, and on such conditions as a Secretary of State from time to time recommends; and

(3) Where a court of summary jurisdiction orders otherwise than by an attendance order under this Act a child to be sent to a certified day industrial school, the court shall also order the parent of such child, if liable to maintain him, to contribute to his industrial training, elementary education, and meals in the school such sum not exceeding two shillings per week as is named in the order; it shall be the duty of the local authority to obtain and enforce the said order, and every sum paid under the order shall be paid over to the local authority in aid of their expenses under this Act; if a parent resident in any parish is unable to pay the sum required by the said order to be paid, he shall apply to the guardians having jurisdiction in the parish, who, if satisfied of such inability, shall give the parent sufficient relief to pay the said sum, or so much thereof as they consider him unable to pay, and the money so given shall be charged to the parish as provided by this Act in the case of money given for the payment of school fees; and

(4) The managers of a certified day industrial school may, upon the request of a local authority and of the parent of a child, and upon the undertaking of the parent to pay towards the industrial training, elementary education, and meals of such child such sum, not less than one shilling a week, as a Secretary of State from time

Appndx.

to time fixes, receive such child into the school under an attendance order or without an order of a court; and there may be contributed out of moneys provided by Parliament in respect of that child such sum, not exceeding sixpence a week and on such conditions as a Secretary of State from time to time recommends.

It shall be lawful for Her Majesty from time to time, by Order in Council, to apply to a certified day industrial school the provisions of the Industrial Schools Act, 1866, and the Acts amending the same, with such modifications as appear to Her Majesty to be necessary or proper for adapting such provisions to a day industrial school, and bringing them into conformity with this Act; and such Order may provide that a child may be punished for an offence by being sent to a certified industrial in lieu of a certified reformatory school, or may otherwise mitigate any punishment imposed by the said Act.

It shall be lawful for Her Majesty from time to time, by Order in Council, to revoke and vary any Order in Council made under this section.

Every such Order shall be laid before both Houses of Parliament within one month after it is made if Parliament be then sitting, or if not, within one month after the beginning of the then next session of Parliament, and while in force shall have effect as if it were enacted in this Act.

A Secretary of State may from time to time make, and when made revoke and vary, the forms of orders for sending a child to a day industrial school, and the manner in which children are to be sent to such school.

If a Secretary of State is of opinion that, by reason of a change of circumstances or otherwise, a certified day industrial school ceases to be necessary or expedient for the proper training and control of the children of any class of population in the neighbourhood of that school, he may, after due notice, withdraw the certificate of the school, and thereupon such school shall cease to be a certified day industrial school.

Provided, that the reasons for withdrawing such certificate shall be laid before both Houses of Parliament within one month after notice of the withdrawal is given, if Parliament be then sitting, or if not, within one month after the then next meeting of Parliament.

Conditions of contri-

17. The conditions of a parliamentary contribution to a certified day industrial school, to be recommended by the Secre-

tary of State, shall provide for the examination of the children according to the standards of proficiency for the time being in force for the purposes of a parliamentary grant to public elementary schools; but may vary the amounts of the contributions to be made in respect of such standards respectively.

bution to day industrial schools.

Any conditions recommended by a Secretary of State for the purposes of contributions to a day industrial school shall be laid before Parliament in the same manner as Minutes of the Education Department relating to the annual parliamentary grant.

Parliamentary Grant.

Contribution for fees of children who obtain certificates.

18. *Where, during the first five years after the commencement of this Act, or any further period which Her Majesty may from time to time fix by Order in Council, a child, before he has attained the age of eleven years, obtains such certificate of proficiency in reading, writing, and elementary arithmetic, and also such certificate of previous due attendance at a public elementary school, as are in this Act in that behalf mentioned, then, subject to the regulations and conditions contained in an order of the Education Department for the time being in force under the First Schedule to this Act, the school fee payable by such child at any public elementary school in the course of the three years next after he obtains the last of such certificates, not exceeding the ordinary fee charged at such school, may be paid by the Education Department out of moneys provided by Parliament, the school fees so paid to be reckoned as school pence to be met by the grant payable by the Department.*

[This section is repealed by the Elementary Education Act, 1891 (54 & 55 Vict. c. 51), s. 11.]

Amendment of 33 & 34 Vict. c. 75, s. 97, as to conditions of annual parliamentary grant.

19. *So much of section ninety-seven of "The Elementary Education Act,* 1870," *as enacts that the conditions required to be fulfilled by an elementary school in order to obtain the annual parliamentary grant shall provide that the grant shall not for any year exceed the income of the school for that year which was derived from voluntary contributions and from school fees, and from any sources other than the parliamentary grant, shall be repealed as from the thirty-first day of March, one thousand eight hundred and seventy-seven.*

After the thirty-first day of March, one thousand eight hundred and seventy-seven, the conditions required to be ful-

Appndx.

granted to the child entitled to the same free of cost or charge to such child, or to the parent of such child.

The Education Department may from time to time by order make, and when made revoke and vary, regulations with respect to certificates of age for the purposes of this Act and the persons by whom and the form in which certificates of the said proficiency and due attendance are to be granted, and with respect to other matters relating thereto, and with respect to the preservation of registers and other records of such proficiency and attendance, and such regulations shall be observed by the local authority and the managers of certified efficient schools.

All regulations made by the Education Department under this section shall be laid before Parliament in the same manner as Minutes of the Education Department relating to the annual parliamentary grant.

Certificates of birth for purposes of Act.

25. Where the age of any child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the elementary education or employment in labour of such child, any person on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of such fee, not exceeding one shilling, as the Local Government Board from time to time fix, shall be entitled to obtain a certified copy under the hand of the registrar or superintendent registrar of the entry in the register under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of the child named in the requisition.

Returns of registrars of births and deaths to school boards.

26. Every registrar of births and deaths, when and as required by a local authority, shall transmit, by post or otherwise, a return of such of the particulars registered by him concerning deaths and births of children as may be specified in the requisition of the local authority.

The local authority may supply a form, approved by the Local Government Board, for the purpose of the return, and in that case the return shall be made in the form so supplied.

The local authority may pay, as part of their expenses under this Act, to the registrar making such return such fee as may be agreed upon between them and the registrar, not exceeding twopence for every birth and death entered in such return.

Provision in case of *failure of*

27. If the Education Department are satisfied, after such inquiry and such notice to any local authority as they think

expedient, that such authority have failed to fulfil their duty under this Act, the Education Department (without prejudice to any other remedy)—

local authority to perform their duty under this Act.

(*a.*) If the authority are a school board, may proceed as if such board were a school board in default within the meaning of the Elementary Education Act, 1870; and

(*b.*) If the authority are not a school board, may by order appoint any person for a specified period not exceeding two years to perform the duty of the defaulting school attendance committee under this Act, and from time to time change such persons.

During the said specified period the persons so appointed shall perform the duty of the defaulting school attendance committee under this Act, to the exclusion of that committee, and shall in the performance and for the purposes of such duty be invested with all the powers of the school attendance committee, but shall not be subject to any control on the part of the council or guardians who appointed the defaulting committee: but after the expiration of such period a school attendance committee shall forthwith be appointed by the council or guardians as the case may require, and shall resume the duty of the local authority under this Act, subject nevertheless to any further proceeding under this section in the case of a new default.

All expenses incurred by persons appointed under this section by the Education Department to act in lieu of a defaulting school attendance committee, including such remuneration, if any, as the Education Department may assign to such person shall, to the amount certified by the Education Department to be due, be a debt to Her Majesty from the council or guardians by whom the defaulting committee were appointed, and may be recovered accordingly; and the certificate of the Education Department shall be conclusive evidence that the sum named in the certificate is due under this section.

The Education Department shall annually report to Parliament the cases in which any proceedings have been taken by them in pursuance of this section.

Officers of local authority.

28. Every local authority, but subject in the case of a school attendance committee to the approval hereinafter mentioned, shall direct one or more of their officers, or the officers of the council or guardians by whom the committee are appointed, to act in the execution of this Act, and of any bye-laws in force

Appndx. within the jurisdiction of such authority, and may, if they think fit, pay him or them for so doing, and may, if need be, appoint and pay officers for the purpose.

Power of officer of local authority to enter place of employment.

29. If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time within forty-eight hours from the date of the order, and examine such place and any person found therein touching the employment of any child therein.

Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction to a penalty not exceeding twenty pounds.

Provision as to powers and expenses of school board.

30. The powers and expenses of a school board under this Act shall be deemed to be powers and expenses of that board under the Elementary Education Act, 1870, and the provisions of that Act and any Act amending the same shall apply thereto accordingly.

Expenses of local authority other than school board.

31. A school attendance committee under this Act shall not incur any expense, or appoint, employ, or pay any officer without the consent of the council or guardians by whom the committee were appointed, and where they are appointed by guardians, also of the Local Government Board, but with such consent may employ and pay any officer of such council or guardians. The expenses (if any) of a school attendance committee under this Act shall be paid,—

(1) Where the committee is appointed by a council, out of the borough fund or borough rate ; and,

(2) Where the committee is appointed by a board of guardians, out of a fund to be raised out of the poor rate of the parishes in which the committee act for the purposes of this Act, according to the rateable value of each parish :

For the purpose of obtaining payment of such expenses, the board of guardians shall have the same powers as they have for the purpose of obtaining contributions to their common fund under the Acts relating to the relief of the poor

32. Subject to the provisions of this Act the council or guardians may from time to time add to or diminish the number of members of a school attendance committee appointed by them.

Provisions as to school attendance committee and appointment of local committee.

A school attendance committee appointed by guardians shall act for every parish in the union which is not for the time being under any other local authority within the meaning of this Act.

A school attendance committee may, if they think fit, appoint different local committees for different parishes or other areas in their district for the purpose of giving the school attendance committee such aid and information in the execution of this Act as may be required by the committee appointing them, but any such local committee shall not have power to make any bye-laws or take any proceeding before a court of summary jurisdiction under this Act.

A local committee may consist of not less than three persons, being, as the school attendance committee appointing them think fit, either wholly members of the council, guardians, or authority by whom that school attendance committee were appointed, or partly such members and partly other persons.

The provisions contained in the Second Schedule to this Act shall apply to every school attendance committee and local committee appointed under this Act.

Power to authorise appointment of school attendance committee by urban sanitary authority.

33. On the application of the urban sanitary authority of an urban sanitary district which is not and does not comprise a borough, and which is co-extensive with any parish or parishes not within the jurisdiction of a school board, containing according to the last published census for the time being a population of not less than five thousand, the Education Department may by order authorise the sanitary authority of that district to appoint, and thereupon such authority may appoint, a school attendance committee as if they were the council of a borough, and that committee, to the exclusion of the school attendance committee appointed by the guardians, shall enforce the provisions of this Act in the sanitary district, and be in that district the local authority for the purposes of this Act, and all the provisions of this Act shall apply accordingly as if the sanitary authority were the council of a borough.

Provided, that the expenses (if any) of a school attendance committee appointed by an urban sanitary authority shall be paid out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district of such authority, according

Appndx. to the rateable value of each parish, and the urban sanitary authority shall, for the purpose of obtaining payment of such expenses, have the same power as a board of guardians have for the purpose of obtaining contributions to their common fund under the acts relating to the relief of the poor, and the accounts of such expenses shall be audited as the accounts of other expenses of the sanitary authority.

Any bye-laws in force in an urban sanitary district, or any part thereof, before the appointment of a school attendance committee by the sanitary authority of such district shall continue in force, subject nevertheless to be revoked or altered by the school attendance committee of the sanitary authority, in pursuance of section seventy-four of the Elementary Education Act, 1870, as amended by this Act.

Where an urban sanitary district is not and does not comprise a borough, and is not wholly within the jurisdiction of a school board, and is not within the foregoing provisions of this section, the urban sanitary authority of that district may from time to time appoint such number as the Education Department allow, not exceeding three, of their own members to be members of the school attendance committee for the union in which the district or the part thereof not within the jurisdiction of a school board is situate, and such members, so long as they are members of the sanitary authority, and their appointment is not revoked by that authority, shall be members of the school attendance committee, and have the same powers and authorities as if they had been appointed by the guardians.

Where a school board is appointed after the commencement of this Act for any parish which forms or comprises the whole or part of an urban sanitary district in which the school attendance committee is appointed by the urban sanitary authority, such school attendance committee shall, at the expiration of two months after the election of the school board, cease to act for the urban sanitary district, and the school attendance committee appointed by the guardians shall be the local authority for so much of the urban sanitary district as is not under the school board.

All bye-laws in force at the expiration of the said two months shall continue in force, subject to being revoked or altered by the local authority, in pursuance of section seventy-four of the Elementary Education Act, 1870, as amended by this Act.

34. In a union the clerk of the guardians shall be the clerk of the school attendance committee for the purposes of this Act.

Clerk of school attendance committee of guardians, and application of Acts to guardians and school attendance committee.

All enactments relating to guardians and their officers and expenses, and to relief given by guardians, shall, subject to the express provisions of this Act, apply as if the guardians, including the school attendance committee appointed by them, and their officers acting under this Act, and expenses incurred, and money paid for school fees and relief given under this Act, were respectively acting, incurred, and paid and given as relief, under the Acts relating to the relief of the poor, and the Local Government Board may make rules, orders, and regulations accordingly.

Any expenses incurred by officers of guardians in carrying into effect section twenty of "The Elementary Education Act, 1873," when paid by such guardians, may be charged by them to the parish in respect of which such expenses are incurred.

Charge to parish of money for school fees.

35. Money given under this Act for the payment of school fees for any child of a parent who is not a pauper and is resident in any parish shall be charged by the guardians having jurisdiction in such parish to that parish with other parochial charges.

Effect of subsequent appointment of school board.

36. Where a school board is appointed after the commencement of this Act for any school district the authority acting at the time of such appointment as the local authority under this Act shall continue so to act until the expiration of two months after the election of such board, and shall then cease so to act for such district; nevertheless, all bye-laws previously made by the local authority shall continue in force, subject to being revoked or altered in respect of that district by the school board in pursuance of section seventy-four of the Elementary Education Act, 1870.

Legal Proceedings.

Application of 36 & 37 Vict. c. 86, ss. 23—25, to penalties, and punishment for fraudulently obtaining payment of fees.

37. Sections twenty-three, twenty-four, and twenty-five of the Elementary Education Act, 1873 (which provisions relate to legal proceedings, and the forgery of certificates), shall, so far as applicable, apply in the case of offences and penalties under this Act, and proceedings for such offences and penalties and of certificates for the purposes of this Act, in like manner as if those sections were enacted in this Act and in terms made applicable thereto.

Appndx.

And every person who shall fraudulently obtain or enable or procure any other person to obtain from any school board or local authority payment, or remission of payment, or an order for payment, or remission of payment of any school fees, shall be liable on summary conviction to imprisonment for a period not exceeding fourteen days.

An order which a court of summary jurisdiction have authority to make in pursuance of this Act may be made in manner provided by the Summary Jurisdiction Acts.

No prosecutions except with the authority of two members of a school board or local authority.

38. No legal proceedings for non-attendance or irregular attendance at school shall be commenced in a court of summary jurisdiction, by any person appointed to carry out the compulsory bye-laws of a school board or local authority, except by the direction of not less than two members of a school board or school attendance committee.

Exemption of employer on proof of guilt of some other person.

39. Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

Where a child is taken into employment in contravention of this Act on the production by or with the privity of the parent of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

Where an employer charged with taking a child into his employment in contravention of this Act proves that he has used due diligence to enforce the observance of this Act, and either that some agent or workman of his employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate and under the belief in good faith in the genuineness and truth of such certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of this Act and under the belief in good faith in such representation, the employer shall be exempt from any penalty.

Where an employer satisfies the local authority, inspector, or other person about to institute a prosecution that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for pro-

ceeding against and convicting such agent, workman, or parent, such authority, inspector, or person shall institute proceedings against such agent, workman, or parent, and not against the employer.

Miscellaneous.

Adaptation of 36 & 37 Vict. c. 86, s. 3, respecting pauper children to this Act.

40. Whereas by section three of the Elementary Education Act, 1873, provision is made respecting the payment by guardians of the fees of pauper children, and with a view to adapt the said section to the provisions of this Act it is expedient to substitute for the said section the enactment following: Be it therefore enacted as follows:

Where relief out of the workhouse is given by the guardians or their order, by way of weekly or other continuing allowance to the parent of any child above the age of five years who has not reached the standard in reading, writing, and arithmetic, prescribed by standard three of the Code of one thousand eight hundred and seventy-six, or who for the time being either is prohibited by this Act from being taken into full time employment, or is required by any bye-law under section seventy-four of the Elementary Education Act, 1870, as amended by this Act, to attend school, or to any such child, it shall be a condition for the continuance of such relief that elementary education in reading, writing, and arithmetic shall be provided for such child, and the guardians shall give such further relief (if any) as may be necessary for that purpose.

Any such relief to a parent as above mentioned shall not be granted on condition of the child attending any public elementary school other than such as may be selected by the parent, nor refused because the child attends or does not attend any particular public elementary school.

The guardians shall not have power under this section to give any relief to a parent in order to enable such parent to pay more than the ordinary fee payable at the school which he selects, or more than the fee which under this Act they can enable a parent to pay in any other case.

All relief given by guardians under this section shall be deemed to be relief within the meaning of the Acts relating to the relief of the poor, and shall be paid out of their common fund, and where given by the guardians of any union in the metropolis as defined by the Metropolitan Poor Act, 1867, shall

Appndx.

be deemed to be expenses payable from the Metropolitan Common Poor Fund within the meaning of section sixty-nine of that Act, and shall be repaid to such guardians accordingly.

[Money granted for the education of the children of persons receiving relief out of the workhouse need not be paid to the parents, but may, in the discretion of the guardians, be directly applied in the payment of the school fees: *Re the Guardians of the Darlington Union* (1875), 32 L. T. (N.S.) 320.]

Dissolution of school board under certain circumstances.

41. Where application for the dissolution of a school board is made to the Education Department by the like persons and in the like manner as an application for the formation of a school board, under section twelve of the Elementary Education Act, 1870, nevertheless by a majority of not less than two-thirds of those who shall vote upon the occasion, and the Education Department are satisfied that no school and no site for a school is in the possession or under the control of the school board, and that there is a sufficient amount of public school accommodation for the district of the school board, and no requisition has been sent by the Education Department to such school board under section ten of the Elementary Education Act, 1870, requiring them to supply public school accommodation, it shall be the duty of the Education Department to take the circumstances of the case into consideration, and if they shall be of opinion that the maintenance of a school board is not required for the purposes of education in the district, it shall be lawful for the Education Department, after such notice as they think sufficient, to order the dissolution of the school board: Provided always, that no application shall be made for the dissolution of a school board except within six months before the expiration of the period for which the school board has been elected, and no order for the dissolution of such school board shall take effect until after the expiration of such period, except that after the order is made an election of members of that board shall not be held.

The Education Department by any such order shall make provision for the disposal of all money, furniture, books, documents, and property belonging to the school board, and for the discharge out of the local rate of all the liabilities of the board, and such other provisions as appear to the Department necessary or proper for carrying into effect the dissolution of the board.

The Education Department shall publish the order in manner directed by the Elementary Education Act, 1873, with respect to

the publication of notices, and after the date of such publication, or any later date mentioned in the order, the order shall have effect as if it were enacted by Parliament, without prejudice nevertheless to the subsequent formation of a school board in the same school district; all bye-laws previously made by the school board shall continue in force, subject nevertheless to be revoked or altered by the local authority under this Act: Provided, that if after the dissolution of a school board in any school district the Education Department are of opinion that there is not a sufficient amount of public school accommodation in such school district, they may after due notice cause a school board to be formed for such school district, and send a requisition to such school board in the same manner in all respects as if they had published a final notice under the Elementary Education Act, 1870.

The Education Department shall in each case where it shall assent to the dissolution of a school board lay before both Houses of Parliament a statement of its reasons for giving such assent.

Provision of officers by school board with consent of Education Department.

42. Where a school board satisfy the Education Department that, having regard to the large population of the district of such board, it is necessary or proper that the board should provide an office, the Education Department may authorise the board to provide an office, and the board shall for that purpose have the same power as they have under the Elementary Education Acts, 1870 to 1873, for the purpose of providing sufficient school accommodation for their district, including the power of borrowing money under section 10 of the Elementary Education Act, 1873, and the provision of such office shall be deemed to be a work for which a school board is authorised to borrow within the meaning of the Public Works Loans Act, 1875.

Local authority to send returns

43. The local authority under this Act (although not a school board) shall send to the Education Department such returns and information respecting their proceedings under this Act, and respecting matters on which school boards can be required under the Elementary Education Act, 1870, to make returns, as the Education Department from time to time require.

Amendment of 33 & 34 Vict. c. 75, as to elec-

44. From and after the passing of this Act the Elementary Education Act, 1870, shall be construed as if there were substituted for the rule numbered fifteen in the first part of the Second

Appndx.

tions to fill casual vacancies in school board.

Schedule to that Act, *which is repealed by this Act*, the rule in the Third Schedule to this Act; and any reference to the said Second Schedule or the first part thereof shall be construed to refer to the same with the rule so substituted, but the said substitution shall not affect anything done before the passing of this Act.

[The words printed in italics are repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

Application of 33 & 34 Vict. c. 75, ss. 83, 84, to orders and documents of Education Department.

45. The provisions of the Elementary Education Act, 1870, with respect to orders and documents of the Education Department, shall apply to all orders and documents of the Education Department under this Act.

Effect of schedules.

46. The schedules to this Act shall have effect as if they were enacted in the body of this Act.

Definition of employment in case of parent.

47. A parent of a child who employs such child in any labour exercised by way of trade or for the purposes of gain, shall be deemed for the purposes of this Act to take such child into his employment.

General definitions.

48. A child in this Act means a child between the ages of five and fourteen years.

Terms in this Act shall, so far as is consistent with the tenor thereof, have the same meaning as in the Elementary Education Acts, 1870 and 1873.

The term "certified efficient school" in this Act means a public elementary school, and any workhouse school certified to be efficient by the Local Government Board, and any public or State-aided elementary school in Scotland, and any national school in Ireland, and also any elementary school which is not conducted for private profit, and is open at all reasonable times to the inspection of Her Majesty's inspectors, and requires the like attendance from its scholars as is required in a public elementary school, and keeps such registers of those attendances as may be for the time being required by the Education Department, and is certified by the Education Department to be an efficient school.

The term "Factory Acts" in this Act, where the Factory Act of any particular year is not referred to, means *the Factory Acts*, 1833 *to* 1874, *as amended by this Act, and includes the Workshop Acts*, 1867 *to* 1871, *as amended by this Act*, and any Acts for the time being in force regulating factories and workshops.

The term "Secretary of State" means one of Her Majesty's Principal Secretaries of State. Appndx.

[The words printed in italics are repealed by the Factory and Workshop Act, 1878 (41 Vict. c. 16), s. 107.]

Provision as to part of a parish.

49. A part of a parish which by or in pursuance of the Elementary Education Acts, 1870 and 1873, is constituted a separate school district shall be deemed to be a separate school district, and so far as necessary a separate parish by itself for the purposes of this Act, and the provisions of those Acts respecting such part of a parish shall apply, and for the purposes of those Acts and this Act the overseers of the entire parish shall be deemed to be the overseers of such part of a parish, and a rate in the nature of a poor rate may be levied therein by such overseers either as a separate rate or as an addition to the poor rate, and shall be deemed to be the local rate; and the guardians shall, for the purposes of this Act, have the like power of obtaining payment of a contribution from the said part of a parish as they have of obtaining a contribution from the whole parish.

Construction of this Act with other enactments.

50. Where any act, neglect, or default is punishable under this Act, and also under any other enactment, or any bye-law made by a school board or other local authority for the time being in force, proceedings may be instituted in respect of such act, neglect, or default under this Act or such other enactment or bye-law, in the discretion of the authority or person instituting the proceedings, so that proceedings under one enactment or bye-law only be instituted in respect of the same act, neglect, or default; and any bye-law made either before or after the commencement of this Act, by any school board or other local authority, under section seventy-four of the Elementary Education Act, 1870, if otherwise valid, shall not be rendered invalid by reason that it is more stringent than the provisions of this Act; and nothing in this Act shall prejudice the effect of or derogate from any provision relating to the committal of children to industrial schools or the employment of children contained in any previous Act of Parliament which may be more stringent in its provisions than this Act.

Temporary modification.

51. *The provisions of this Act, with respect to taking children into employment,*

Appndx.

as to application of Act and saving for children in employment at passing of Act.

(1) *Shall, during twelve months after the commencement of this Act, apply to children of the age of nine years and upwards as if they were of the age of ten years and upwards; and*

(2) *Shall not apply to any child who has attained the age of eleven years before the commencement of this Act.*

A child lawfully employed at the passing of this Act may continue to be employed or may obtain fresh employment at another place in like manner as if this Act had not passed.

[This section is repealed by the 43 & 44 Vict. c. 23, s. 6, *post.*]

Repeal of Acts.

52. *The Acts mentioned in the Fourth Schedule to this Act are hereby repealed as from the commencement of this Act, to the extent in the third column of that schedule mentioned.*

The repeal of any enactment by this Act shall not affect anything previously done or suffered in pursuance of that enactment, and every offence against that enactment may be prosecuted, and any penalty thereunder recovered, and any remedy or legal proceeding for anything done in pursuance of that enactment may be had and carried on in like manner as if this Act had not passed.

[This section is repealed by the 43 & 44 Vict. c. 23, s. 6, *post.*]

Part II.

Application of the Act to Scotland.

53. In the application of this Act to Scotland the following provision shall have effect:

The provisions of this Act with respect to the conditions to be fulfilled by schools in order to obtain an annual parliamentary grant shall apply to Scotland.

SCHEDULES.

FIRST SCHEDULE.

STANDARDS OF PROFICIENCY IN READING, WRITING, AND ELEMENTARY ARITHMETIC, AND PREVIOUS DUE ATTENDANCE AT SCHOOL.

For the purpose of Employment.

(1) The standard of proficiency in reading, writing, and elementary arithmetic for the purpose of a certificate under this Act enabling a child to be employed shall be—

(*a.*) The standard of reading, writing, and elementary arithmetic fixed by standard four of the Code of 1876, or any higher standard.

(2) The standard of previous due attendance at a certified efficient school for the purpose of a certificate under this Act enabling a child to be employed shall be two hundred and fifty attendances after five years of age in not more than two schools during each year for five years, whether consecutive or not:

(3) *During the four years next after the commencement of this Act the standards for the purpose of enabling a child to be employed shall, instead of the foregoing standards, be those shown in the following table:—*

During the Year.	*The Standard of Proficiency shall be the Standard of Reading, Writing, and Arithmetic, fixed by the following Standard of the Code of 1876, or any higher Standard, namely—*	*The Standard of previous due Attendance shall be*	
		The following Number of Attendances.	*In not more than Two Schools during each year for the following number of Years, whether consecutive or not.*
1877	*Second* - - -	250	*Two.*
1878	*Second* - - -	250	*Two.*
1879	*Third* - - -	250	*Three.*
1880	*Third* - - -	250	*Four.*

Appndx.

Provided that—

(a.) *In the case of a school district in which for not less than three years before the commencement of this Act bye-laws have been in force requiring, as a condition of total or partial exemption of a child from attendance at school, that such child must have passed a standard of proficiency corresponding to the fourth standard of the Code of* 1876, *or any higher standard, the same or a corresponding standard of proficiency (but not exceeding the standard which, under this schedule, will be required after four years from the commencement of this Act) shall be required for the purpose of a certificate under this Act enabling a child to be employed.*

(b.) *Where a child has been lawfully taken into employment in any year in consequence of having obtained a certificate in accordance with the above table, such child may in any subsequent year be taken into employment without any further certificate, notwithstanding that under the table a certificate requiring a higher standard is required for that year.*

[This paragraph (3) is repealed by section 6 of the 43 & 44 Vict. c. 23, *post.*]

For the purpose of the Payment of Fees.

(4) The standard of proficiency in reading, writing, and elementary arithmetic for the purpose of a certificate under this Act, with a view to allow of the payment of fees by the Education Department, shall be the standard of reading, writing, and elementary arithmetic fixed by standard four of the Code of 1876 or such higher standard as may be from time to time fixed by the Education Department, and shall include any standard higher than the one fixed by this rule, or than the one for the time being fixed by the Education Department

(5) The standard of previous due attendance at a public elementary school for the purpose of a certificate under this Act with a view to allow of the payment of fees by the Education Department, shall be three hundred and fifty attendances after five years of age in not more than two schools during each year for five years, or such larger number of attendances as may be for the time being fixed by the Education Department:

(6) *Provided that in each of the four years next after the commencement of this Act the standard of previous due attendance shall, in lieu of the foregoing standard, be that shown in the following table:—*

During the Year.	*The Standard of previous due Attendance shall be*	
	The following Number of Attendances.	*If not more than two Schools during each year for the following Number of Years.*
1877	350	*Two.*
1878	350	*Two.*
1879	350	*Three.*
1880	350	*Four.*

[This paragraph (6) is repealed by section 6 of the 43 & 44 Vict. c. 23, *post.*]

(7) The Education Department may from time to time by order make, and when made revoke and vary, such regulations and conditions in relation to the payment of fees under this Act by that Department as they may think expedient.

(8) The order shall provide that not more than ten per cent. of the children presented for examination in a public elementary school shall obtain in the same year certificates entitling them to the payment of fees, and that if the children qualified to obtain such certificates exceed the said percentage, those children who have attended the greatest number of times shall have the preference.

(9) The order may make the continuance of the payment dependent upon the fulfilment of conditions, and shall provide that the continuance of the payment shall be conditional upon the child attending the school for not less than three hundred and fifty attendances in each year, and obtaining at the end of each year a certificate of proficiency in reading, writing, and elementary arithmetic according to a standard higher than the standard according to which it obtained the previous certificate.

Appndx.

(10) The order shall further provide that the school, by previous due attendance at which the child was qualified for obtaining the payment of fees, and the school, the fees at which are paid by the Education Department, shall be a school or department of a school, at which the ordinary payment in respect of the instruction of each scholar does not exceed sixpence a week.

Miscellaneous.

(11) Attendance for the purpose of this schedule means an attendance as defined by the Code of 1876, and where the attendance is at a certified day industrial school includes such attendance as may be from time to time directed for the purpose by a Secretary of State, and where the attendance is at a workhouse school includes such attendance as may be from time to time directed for the purpose by the Local Government Board.

(12) The Code of 1876 in this schedule means the Code of the Minutes of the Education Department made in the year one thousand eight hundred and seventy-six with respect to the parliamentary grant to public elementary schools in England, and in the case of a school in Scotland means the Code of the Minutes of the Scotch Education Department made in the year one thousand eight hundred and seventy-six with respect to the parliamentary grant to elementary schools.

SECOND SCHEDULE.

Rules as to a Local Committee.

(1) Subject to the provisions of this Act, the school attendance committee may from time to time add to or diminish the number of members, or change the members of any local committee appointed by them, or may dissolve any such committee.

(2) A local committee shall, unless the school attendance committee appointing them otherwise direct, continue in office until the first meeting of that committee after the next annual appointment thereof, and thereafter until a new local committee is appointed.

RULES AS TO SCHOOL ATTENDANCE COMMITTEE AND LOCAL COMMITTEE.

(3) Subject to any regulations made in the case of a school attendance committee by the council or guardians appointing it and in the case of a local committee by the school attendance committee appointing it, the provisions of the Third Schedule of "The Elementary Education Act, 1870," with reference to proceedings of managers appointed by a school board, shall apply to the proceedings of a school attendance committee and a local committee under this Act, as if the body appointing the committee were a school board.

(4) Any casual vacancy in a school attendance committee or local committee may be filled up by the body who appointed such committee.

(5) A school attendance committee shall continue in office until the first meeting of the council or guardians appointing it after the next annual election of councillors and guardians, and thereafter until the new committee is appointed.

(6) A committee appointed by guardians shall be appointed at the first meeting after the annual election of guardians, or some other meeting fixed with the approval of the Local Government Board for the purpose.

THIRD SCHEDULE.

RULE AS TO ELECTION OF SCHOOL BOARD.

If any casual vacancy in the office of a member of a school board occurs by death, resignation, disqualification, or otherwise, such vacancy may be filled by the remaining members of the school board, if a quorum, at a special meeting of the board called for the purpose.

Appndx.

FOURTH SCHEDULE.

ACTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
30 & 31 *Vict.* *c.* 146.	*The Workshop Regulation Act*, 1867.	*Sections* 14 *and* 15.
33 & 34 *Vict.* *c.* 75.	*The Elementary Education Act*, 1870.	*Section twenty-five, so much of section seventy-four, and of any bye-law made thereunder, as is affected by the repeal of section twenty-five, and the rule numbered fifteen in the first part of the second schedule, and the rule numbered six in the third part of the second schedule.*
36 & 37 *Vict.* *c.* 67.	*The Agricultural Children Act*, 1873.	*The whole Act.*
36 & 37 *Vict.* *c.* 86.	*The Elementary Education Act*, 1873.	*Section three.*
37 & 38 *Vict.* *c.* 88.	*The Births and Deaths Registration Act*, 1874.	*Section twenty-nine.*

[This schedule is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).]

ELEMENTARY EDUCATION (INDUSTRIAL SCHOOLS) ACT, 1879.

42 & 43 VICT. CHAP. 48.

AN ACT to amend the Law respecting the Powers of School Boards in relation to Industrial Schools.

[11th August, 1879.]

WHEREAS under the Elementary Education Acts, 1870 and 1873, and the Elementary Education Act, 1876, a school board have power, with the consent of one of Her Majesty's Principal Secretaries of State, to establish, build, and maintain industrial schools, and to spread the payment of the expenses of such establishment and building over a number of years not exceeding fifty, and to borrow money for that purpose:

33 & 34 Vict. c. 75, s. 28. 36 & 37 Vict. c. 86, s. 10, and 39 & 40 Vict. c. 79, s. 15.

And whereas a school board, under the said Acts, have the same power as is given to a prison authority by section twelve of the Industrial Schools Act, 1866, to contribute money towards the alteration, enlargement, or rebuilding of an industrial school, or towards the establishment or building of an industrial school, or towards the purchase of land required for the use or for the site of an industrial school:

29 & 30 Vict. c. 118, s. 12.

And whereas under the Reformatory and Industrial Schools Act Amendment Act, 1872, section twelve of the Industrial Schools Act, 1866, is extended to authorise the prison authority themselves to undertake anything towards which they are authorised by that section to contribute:

35 & 36 Vict. c. 21. 29 & 30 Vict. c. 118, s. 12.

And whereas doubts have arisen whether a school board have power to undertake themselves anything towards which they are authorised as above mentioned to contribute or have power to spread the payment of the amount of any such contribution or of the cost of any such undertaking over a number of years, and to borrow money for that purpose, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Elementary Education (Industrial Schools) Act, 1879.

Short title.

This Act and the Elementary Education Acts, 1870 and 1873, and the Elementary Education Act, 1876, may be cited together as the Elementary Education Acts, 1870 to 1879.

33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.

Appndx.

Extension to school board of 29 & 30 Vict. c. 118. 33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 75.

2. A school board shall have power themselves to undertake anything towards which they are authorised by the Industrial Schools Act, 1866, as applied by the Elementary Education Acts, 1870 and 1873, and the Elementary Education Act, 1876, or any of them, to contribute, subject nevertheless to the like consent as is required in the case of any such contribution.

Power of school board to borrow for contribution towards, or undertaking cost of enlarging, &c., an industrial school.

3. Where a school board resolve to contribute any sum of money towards, or to undertake the cost of the alteration, enlargement, or rebuilding, but not of the furnishing of an industrial school, or the establishment or building, but not of the furnishing of a school intended to be an industrial school, or the purchase of land required either for the use of an existing industrial school, or for the site of a school intended to be an industrial school, such school board, with the consent of one of Her Majesty's Principal Secretaries of State, shall have the same power of spreading the payment of the sums so contributed, or of the cost of such undertaking, over a number of years, and of borrowing money for that purpose, as they have in the case where they resolve to establish an industrial school; and the provisions of the Elementary Education Acts, 1870 and 1873, and of the Elementary Education Act, 1876, and the Public Works Loans Act, 1875, shall apply accordingly.

33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79. 38 & 39 Vict. c. 89.

For the purposes of this Act an industrial school means a certified industrial school and a certified day industrial school.

Power of guardians to contribute to maintenance of child in industrial school.

4. Where a child is ordered upon complaint made by a school attendance committee to be sent to a certified industrial school, the council, guardians, or sanitary authority appointing such committee shall have, on the recommendation of the committee, the same power of contributing toward the maintenance of such child in the said school as if they were a school board, and the contribution by such guardians shall require the like consent as is required under section thirty-one of the Elementary Education Act, 1876, to any other expense incurred by a school attendance committee.

39 & 40 Vict. c. 79, s. 31.

The expenses of any such contribution shall be paid in like manner as the expenses of the school attendance committee, on whose recommendation the contribution is made, are paid in pursuance of the Elementary Education Act, 1876.

39 & 40 Vict. c. 79.

ELEMENTARY EDUCATION ACT, 1880.

43 & 44 VICT. CHAP. 23.

AN ACT to make further provision as to Bye-laws respecting the attendance of Children at School under the Elementary Education Acts. [26th August, 1880.]

WHEREAS a school attendance committee within the meaning of the Elementary Education Act, 1876, are authorised to make bye-laws respecting the attendance of children at school under section seventy-four of the Elementary Education Act, 1870, as if such school attendance committee were a school board, but a school attendance committee for a union cannot make bye-laws respecting any parish in their union, except on the requisition of the parish; and it is expedient to make further provision for the making of bye-laws respecting the attendance of children at school:

39 & 40 Vict. c. 79.

33 & 34 Vict. c. 75.

And whereas it is expedient otherwise to amend the Elementary Education Act, 1876, in respect of bye-laws:

39 & 40 Vict. c. 79.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction.

1. This Act may be cited as the Elementary Education Act, 1880, and shall be construed as one with the Elementary Education Act, 1876, and that Act and this Act may be cited together as the Elementary Education Acts, 1876 and 1880.

39 & 40 Vict. c. 79.

Obligation to make bye-laws as to the attendance of children at school.

2. It shall be the duty of the local authority (within the meaning of the Elementary Education Act, 1876) of every school district in which bye-laws respecting the attendance of children at school under section seventy-four of the Elementary Education Act, 1870, are not at the passing of this Act in force, forthwith to make bye-laws under that section for such district.

39 & 40 Vict. c. 79.

33 & 34 Vict. c. 75.

If at any time after the thirty-first day of December, one thousand eight hundred and eighty, it appears to the Education Department that in any school district there are no bye-laws under that section in force, the Education Department may either proceed under section twenty-seven of the Elementary Education Act, 1876 (which relates to a local authority who fail to fulfil their duty under that Act), or may make bye-laws respecting the attendance of children at school in that district, and the bye-laws so made shall have effect and be enforced and

39 & 40 Vict. c. 79.

Appndx.

be subject to revocation and alteration as if they had been made by the local authority for that district and sanctioned by the Education Department in pursuance of section seventy-four of the Elementary Education Act, 1870 : Provided that where in a school district in which bye-laws are not in force a bye-law is made in pursuance of this section, that bye-law shall not prevent a child who, at the date of the bye-law taking effect, is employed in accordance with the Elementary Education Act, 1876, from continuing to be so employed.

33 & 34 Vict. c. 75.

39 & 40 Vict. c. 79.

Power of school attendance committee to make bye-laws.

3. The school attendance committee for a union comprising a parish may, in pursuance of section twenty-one of the Elementary Education Act, 1876, without the requisition of the parish, make bye-laws under section seventy-four of the Elementary Education Act, 1870, respecting the attendance of children at school.

39 & 40 Vict. c. 79.

33 & 34 Vict. c. 75.

Enforcing of bye-laws.

4. Every person who takes into his employment a child of the age of ten and under the age of thirteen years resident in a school district, before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act, 1876, and shall be liable to a penalty accordingly.

39 & 40 Vict. c. 79.

Proceedings may, in the discretion of the local authority or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act or neglect or default alleged as such contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of section eleven of the Elementary Education Act, 1876 : Provided that nothing in this section shall prevent an employer from employing any child who is employed by him or by any other person at the time of the passing of this Act, and who attends school in accordance with the provisions of the Factory and Workshop Act, 1878.

39 & 40 Vict. c. 79.

41 & 42 Vict. c. 16.

Amendment of 39 & 40 Vict. c. 79, s. 40, as to education being condition of relief to parents of children.

5. Notwithstanding anything contained in section forty of the Elementary Education Act, 1876, a child shall not, as a condition of the continuance of relief out of the workhouse being continued to him or his parent, be required to attend school further or otherwise than he is required to attend by a bye-law in force under section seventy-four of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1876, and this Act, in the school district in which he is resident : Provided that this section shall not apply where there is no such *bye-law* in force in the school district.

33 & 34 Vict. c. 75.

39 & 40 Vict. c. 79.

Repeal. 39 & 40 Vict. c. 79.

6. The Elementary Education Act, 1876, shall be repealed to the extent and from the times in the third column of the schedule to this Act mentioned, without prejudice to anything previously done or suffered, or any order previously made, or any right or title or liability acquired, accrued, or incurred in pursuance of any enactment hereby repealed; and any such thing, order, right, and title and liability may be enforced, and any proceeding then pending for such enforcement may be carried on, as if such enactment had not been repealed.

SCHEDULE.

ENACTMENT REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	In section twenty-one, the words "may if they think fit" and the words "on the requisition of the parish, but not otherwise," as from the passing of this Act. Section twenty-two, as from the passing of this Act. Sections fifty-one and fifty-two, as from the passing of this Act. First Schedule, as from the first of January, one thousand eight hundred and eighty-one, from "During the four years next after" down to "higher standard required for that year," both inclusive (being paragraph (3)), and from "Provided that in each of the four years next after" down to the end of the table, both inclusive (being paragraph 6).

SCHOOL BOARDS ACT, 1885.

48 & 49 VICT. CHAP. 38.

AN ACT to amend the Law relating to School Boards so far as affected by the incorporation of a Municipal Borough and as respects the divisions of the Metropolis.

[31st July, 1885.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Provision as to school boards affected by incorporation of municipal borough. 45 & 46 Vict. c. 60.

1. Whereas by sub-section one of section two hundred and thirteen of the Municipal Corporations Act, 1882, it is enacted as follows :

" Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporation Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority :"

And whereas sub-section six of the same section two hundred and thirteen provides that a local authority for the purposes of the above enactment shall mean the authorities therein mentioned, " and any other authority not in this section excepted and not being a school board, and having powers of local government and of rating for public purposes :"

And whereas difficulties have arisen respecting the effect of the creation by a charter of a municipal borough, where the whole or part of the area of such borough is comprised in the district of a school board, then it is expedient to authorise the removal of such difficulties by a scheme under the said Act :

Be it therefore enacted as follows :—

(1) The words " and not being a school board " in sub-section six in section two hundred and thirteen of the Municipal Corporations Act are hereby repealed ;

A scheme under that section if affecting a school board—

(*a.*) Shall before being settled by the Committee of Council be referred to the consideration of the Education Department; and

(*b.*) Shall not place the new borough under more than one school board; and

(*c.*) May provide for the continuance of any bye-laws in force at the date of the scheme.

(2) Where within seven years before the passing of this Act a charter has extended the Municipal Corporations Act, 1882, or the Acts thereby consolidated to the municipal borough created by the charter, any scheme relating to a school board which might have been made under the said Acts if this Act had passed at the date of the said charter may be made after the passing of this Act, and Part Eleven of the Municipal Corporations Act, 1882, shall apply accordingly: Provided that—

(*a.*) Such scheme may be made on the petition either of the council of the said borough or of the persons who composed the school board, or any of them; and

(*b.*) The council of the borough may petition against such scheme in accordance with sub-section four of section two hundred and thirteen of the Municipal Corporations Act, 1882; and

(*c.*) Any such scheme may validate any acts done by the Education Department or the school board or the council of the borough or any justice since the date of the charter.

(3.) This section shall be in addition to and not in derogation of any powers in relation to school boards for the time being vested in the Committee of the Lords of the Privy Council on Education (who are in this section referred to as the Education Department).

Division of Lambeth division of London.

2. Whereas by the Elementary Education Act, 1870, it was enacted that the School Board for London should consist of such number of members elected by the divisions of the metropolis specified in the Fifth Schedule to that Act as the Education Department might by order fix, and power was given to the Education Department from time to time to alter by way of increase or decrease the number of members of any of the said divisions, but no power was given to alter the said divisions,

Appndx. and it is expedient to divide the Lambeth division into two divisions;

Be it therefore enacted as follows:—

(1) The Lambeth division of the metropolis for the purpose of the Elementary Education Acts, 1870 and 1873, shall be divided into two divisions, named East Lambeth and West Lambeth, and the Fifth Schedule to the Elementary Education Act, 1870, shall be construed as if for "Lambeth" there was substituted "East Lambeth" and "West Lambeth."

33 & 34 Vict. c. 75.

(2) The Education Department shall, as soon as may be after the passing of this Act, by order determine the boundaries of the divisions of East Lambeth and West Lambeth for the purposes aforesaid and the number of members to be elected by each of such divisions, subject nevertheless to any subsequent alteration of the number of members in pursuance of the said Acts.

(3) At the first election of the School Board for London which is held after the passing of this Act, members shall be elected for the two divisions constituted by this Act; but nothing in this Act shall affect the School Board for London until such members come into office.

Short title and construction.

3. This Act may be cited as the School Boards Act, 1885.

This Act, so far as relates to school boards on the incorporation of a municipal borough, shall be construed as one with the Municipal Corporations Act, 1882, and together with that Act may be cited as the Municipal Corporations Acts, 1882 and 1885.

This Act, so far as regards the divisions of the metropolis, shall be construed as one with the Elementary Education Acts, 1870 and 1873, and may be cited together with those Acts as the Elementary Education Acts, 1870 to 1885.

33 & 34 Vict. c. 75.
36 & 37 Vict. c. 86.

ELEMENTARY EDUCATION ACT, 1891.

54 & 55 VICT. CHAP. 56.

AN ACT to make further provision for assisting Education in Public Elementary Schools in England and Wales.

[5th August, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Fee grant and conditions thereof.

1.—(1) After the commencement of this Act, there shall be paid out of moneys provided by Parliament, and at such times and in such manner as may be determined by regulations of the Education Department, a grant (in this Act called a fee grant) in aid of the cost of elementary education in England and Wales at the rate of ten shillings a year for each child of the number of children over three and under fifteen years of age in average attendance at any public elementary school in England and Wales (not being an evening school) the managers of which are willing to receive the same, and in which the Education Department are satisfied that the regulations as to fees are in accordance with the conditions in this Act.

(2) If in any case there is a failure to comply with any of the conditions in this Act, and the Education Department are satisfied that there was a reasonable excuse for the failure, the Department may pay the fee grant, but in that case shall, if the amount received from fees has exceeded the amount allowed by this Act, make a deduction from the fee grant equal to that excess.

(3) For the purposes of section nineteen of the Elementary Education Act, 1876, the fee grant paid or payable to a school shall be reckoned as school pence to be met by the grant payable by the Education Department.

Limit of fees in schools receiving fee grant.

2. In any school receiving the fee grant—

(*a.*) Where the average rate of fees received during the school year ended last before the first day of January,

Appndx.

one thousand eight hundred and ninety-one, was not in excess of ten shillings a year for each child of the number of children in average attendance at the school; or

(*b.*) For which an annual parliamentary grant has not fallen due before the said first day of January;

no fee shall, except as by this Act provided, be charged for children over three and under fifteen years of age.

(2) In any school receiving the fee grant where the said average rate was so in excess, the fees to be charged for children over three and under fifteen years of age shall not, except as by this Act provided, be such as to make the average rate of fees for all such children exceed for any school year the amount of the said excess.

Prohibition of charges in certain schools receiving fee grant.

3. In any school receiving the fee grant, where the average rate charged and received in respect of fees and books, and for other purposes, during the school year ended last before the first day of January, one thousand eight hundred and ninety-one, was not in excess of ten shillings a year for each child of the number of children in average attendance at the school, no charge of any kind shall be made for any child over three and under fifteen years of age.

Power to modify limit of fees in certain cases.

4.—(1) Notwithstanding anything hereinbefore contained, the Education Department, if they are satisfied that sufficient public school accommodation, without payment of fees, has been provided for a school district, and that the charge of school fees or the increase of school fees for children over three and under fifteen years of age in any particular school receiving the fee grant is required owing to a change of population in the district, or will be for the educational benefit of the district, or any part of the district, may from time to time approve such charge or increase of fees in that school, provided that the ordinary fee for such children shall not exceed sixpence a week.

(2) The Education Department shall report annually to Parliament all cases in which they have sanctioned or refused the imposition or augmentation of fees under this section, with a statement of the amount of fee permitted.

(3) The Education Department may, if they think fit, make it an express condition of such approval that the amount received for any school year from the fees so charged or increased, or a specified portion of that amount, shall be taken in reduction of the fee grant which would otherwise have been payable for that school year, and in that case the fee grant shall be reduced accordingly.

Provision for free school accommodation.

5. If at any time after the expiration of one year from the commencement of this Act it is represented to the Education Department that there is in any school district, or any part of a school district, an insufficient amount of public school accommodation without payment of fees for children over three and under fifteen years of age, for whom such accommodation is desired, and the Education Department are satisfied after inquiry that such is the case, the Department shall direct the deficiency to be supplied in the manner provided by sections nine and ten of the Elementary Education Act, 1870, and every other section enabling them in that behalf, with respect to the supply of public school accommodation; and the expression "public school accommodation" in that Act shall include public school accommodation without payment of fees.

Provided that whenever and so long as any deficiency in such last-mentioned public school accommodation in any district is in course of being supplied with due despatch, no requisition or order shall be issued in that behalf by the Education Department.

Power to contribute from fee grant to common school fund.

6. The managers of two or more public elementary schools in the same or neighbouring school districts, not being schools provided by a school board, may pay the fee grant, or part thereof, received by each school into a common fund for distribution, as may be arranged by them, between or among such schools.

Provided that the fee grant received by each school in the first instance shall alone count as income of such school for the purposes of this Act and of section nineteen of the Elementary Education Act, 1876, and a contribution to a school from any such common fund shall not be reckoned as income of such school from other sources within the said section nineteen.

Grouping of schools.

7. Where the managers of two or more public elementary schools in the same or neighbouring school districts agree to

Appndx.

associate and elect a committee for the schools, any surplus income on the accounts for the school year of any of the associated schools may be paid into a common fund, out of which contributions may be made to any of the other associated schools; but the contributions received by any such school shall not be counted as income from other sources for the purpose of section nineteen of the Elementary Education Act, 1876, so that no addition to the public charge may result from this section taken in conjunction with the said section nineteen. Provided that no board school shall under this section be associated with any public elementary school other than a board school.

Explanation of 33 & 34 Vict. c. 75, s. 17.

8. Nothing in section seventeen of the Elementary Education Act, 1870, shall prevent a school board from admitting scholars to any school provided by the board without requiring any fee.

Provision for equality of treatment.

9. Nothing in this Act shall give any preference or advantage to any school on the ground that it is or is not provided by a school board.

Meaning of "school, year," and "average attendance."

10. In this Act the expression "school year" shall mean a year or other period for which an annual parliamentary grant is for the time being paid or payable under the minutes of the Education Department; and the expression "average attendance" shall, for the purposes of the fee grant, mean average attendance calculated in accordance with the minutes in force at the commencement of this Act.

Repeal.

11. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement of Act.

12. This Act shall come into operation on the first day of September, one thousand eight hundred and ninety-one.

Short title and construction.

13.—(1) This Act may be cited as the Elementary Education Act, 1891, and shall be construed as one with the Elementary Education Acts, 1870 to 1890.

(2) The Elementary Education Acts, 1870 to 1890, and this Act, may be cited collectively as the Elementary Education Acts, 1870 to 1891.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section twenty-six.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	Section eighteen.

ELEMENTARY EDUCATION (ORDERS) ACT, 1874.

37 & 38 VICT. CHAP. 90.

AN ACT to declare the Validity of Orders of the Education Department with respect to United School Districts, and to make better Provision with respect to such Orders.

[7th August, 1874.]

WHEREAS the Education Department, in pursuance of the Elementary Education Acts, 1870 and 1873, have made the orders mentioned in the schedule to this Act with respect to the united school districts mentioned in those orders: 33 & 34 Vict. c. 75, s. 47. 36 & 37 Vict. c. 86.

And whereas, upon the application of a school board of one of the said united districts for a loan from the Public Works Loan Commissioners, doubts have been raised as to the validity of the said orders, or some of them, and the right of persons acting as members of a school board to act as such:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Elementary Education (Orders) Act, 1874. Short title.

2. This Act shall be construed as one with the Elementary Education Acts, 1870 and 1873, which are in this Act referred to as the principal Acts. Construction of Acts.

Appndx.

Validity of orders in schedule.

3. The orders made in pursuance of the principal Acts by the Education Department, which are mentioned in the schedule to this Act, shall be deemed to have been authorised by those Acts, and to have been duly made, and shall have full effect accordingly; and as respects each of the said orders the school district formed thereby shall be deemed to have been and to be legally formed; and any school board which has been or is acting as such in any such district shall be deemed to have been and to be a legally constituted school board; and any persons who have been or are acting as members of a school board in any such district shall be deemed to have been legally chosen, and to have formed and to form a legal school board; and on the retirement of all or any members of a school board in any such district, the vacancies may be filled up in the same manner in all respects as if such retiring members or member had been and were in all respects legally chosen members of a legally constituted school board.

Validity of future orders.

4. From and after the passing of this Act the Education Department may, if they think fit, make orders directing that any school board, which at the date of any order for forming a united school district exists in any of the school districts constituting such united school district shall either with or without any change in the existing members, or in the number of the members thereof, be the school board for the united school district.

SCHEDULE.

List of Orders.

Date of Order.	United District to which Order refers.	County.
7th April, 1873 -	East and West Looe -	Cornwall.
10th July, 1873 -	Bersham - - -	Denbigh.
4th November, 1873	Hutton Cranswick -	York (East Riding).
5th January, 1874 -	Mickleton - - -	Gloucester.
12th January, 1874 -	Brecon - - - -	Brecon.
10th January, 1874 -	Narberth - - -	Pembroke.
14th February, 1874-	Newtown and Llanllwchaiarn	Montgomery.

INDEX.

A.

ABSENCE,

From meetings of school board, 20—when to disqualify member, 20—when not to disqualify, 20—when member disqualified eligible for re-election, 20.

ACCOMMODATION,

When additional accommodation required, 8—board to keep sufficient school accommodation, 164, 165.

Deficiency in, 9—who has the prior right to supply, 9—circumstances to be taken into account in considering, 9.

Decision of Education Department as to deficiency, 11—publication of decision, 11—appeal against, 11—who may appeal, 11—when a public inquiry may be held, 11—deficiency imminent in borough, 12—application from school board, how made, 12—when Education Department determine whether there is a deficiency in, 10—how ascertained, 11.

Final notice of Education Department, 11—what to contain, 11—resolution as to, 13, 14—if rejected, when may be brought again, 14—school board bound to supply original deficiency, 9—determination by Education Department of deficiency, 161.

Free school accommodation, 130, *n* (*f*), 141, 142—provision of free places, 141, 143, 267—in board school, 142—deficiency in school board district, 143—in other districts, 143—how supplied, 143—school board failing to supply deficiency may be deemed "in default," 143—when board may be appointed to supply, 143—when to be made, 141—in public elementary schools, 6—efficient and suitable, 6—what is, 6, 7—in London, 8—in one district available for neighbouring district, 17—when unnecessary to provide accommodation for neighbouring district, 17—in school districts, 9.

ACCOMMODATION—*continued.*

Notice by Department of accommodation required, 161—persons aggrieved by decision of Department, 55—may apply for public inquiry, 55—what proportion of population to be provided, 7, 8—purchase of land for, 61—returns as to, 51—who to make, 51—school board created to supply, 11—when deficiency in accommodation imminent, 12—to provide additional school, 58—sufficiency or deficiency really rests with Education Department, 9—sufficiency and efficiency of, how ascertained, 51—supply of, 161—when school board to be established to supply, 10—who to supply after decision of Education Department, 11, 12—when a school board will be formed to supply, 12.

ACCOUNTS,

Allowance and disallowance of items by auditor, 154—persons aggrieved by, 154—remedies of, 154—audit of, 151, 185—when to be audited, 150, 151—who is to audit, 150—remuneration of auditor, 150—scale of, 150—banker's pass book, 150—when to be laid before auditor, 150—books of account, 149—abstract book, 149—cash book, 149—ledger, 149—petty cash book, 149—books of account of Public Works Loans Commissioners, 32—open to inspection, 32—books, bills, vouchers, and documents, 153—by whom to be produced before auditor, 153—copies and extracts from, 153—duties of clerk to school board, 149. *See* "Clerk"—entry of sum unlawfully expended, 156—penalty on, 156—to be examined by board, 148—when, 148—to be signed by the chairman, 148—when, 148.

Financial statement, 149—by whom to be prepared, 149—to be submitted to district auditor, 149, 150—form of keeping, 156—Local Government Board to regulate, 156.

Income and expenditure of school managers, 124—inspection of, 124—publication of, 124—income and expenditure, 123—to be kept by managers, 123—inspection, 153—making up and examination of, 216.

Managers of voluntary school, 98—publication of, 98—inspection of, 98—moneys, books, &c., certified to be due by auditor, 155—when to be paid over, 155—publication of, 187—regulations as to audit, 216—by whom to be made, 216, 217.

ACCOUNTS—*continued.*

School board, 148—when to be made up, 148—school fees account, 150—what to contain, 150—schoolmaster to keep, 150—where another person appointed to keep, 150—special common fund, 78—what accounts to be kept by overseers, 76—statement of accounts, &c., when to be deposited, 153—where to be deposited, 153—inspection of, 153—public notice as to, 153—stock and stores account, 150—treasurer's account, 27, 150—what to contain, 150—to be balanced quarterly, 150—when to be laid before board, 150—when to be kept, 27—where school boards combine, 17, 149—may keep one set of accounts, 17, 149—how regulated, 149—when agreement does not provide for keeping one set of accounts, 149—where school board has delegated management of finances, 150—when auditor to sign balance-sheet, 156—school board to print statement, 156—to whom copies to be sent, 156. *See also* "Appeal," "Audit," "Auditor," "Clerk," "Treasurer."

ACTION,

No action to recover arrears of school fees, 106.

ADMINISTRATIVE PROVISION, 4 *et seq.*

ADVERTISING,

By member of board, 19—when not a disqualification, 19.

AGENDA. *See* "Business."

AGENT,

Of employer when liable for illegally employing a child, 113, 244.

ALIENATION,

Where trustees empowered to alienate school, 47.

APPEAL,

Against auditor's surcharge, 154, 155—when to be made, 155—cost of preparation, 155—against decision of Education Department as to deficiency in school accommodation, 11—who may appeal, 11—formation or dissolution of united school district, 16—persons aggrieved as to formation of united school district, 15.

APPLICATION,

Contributory districts, 17—school board, 204—rules respecting resolutions for, 204, 205.

APPOINTMENT,

Local attendance committee, 91—officers, 25, 26, 239—separate school attendance committee in urban sanitary district, 92.

ARBITRATION,

Land taken for school sites, 64, 65—compensation, 64—amount how determined, 65.

ARITHMETIC,

Standard of proficiency, 251—for purpose of employment, 251.

ARRANGEMENT,

Conclusive evidence as to, 49—consent required, 46—Education Department, 46—where there are subscribers, 46—to be in a general form, 46—between managers and school board, 45—transfer of school, 45—How made, 45, 46—terms to be proper and reasonable, 47—what it may provide, 49—absolute conveyance of interest, 49—application of endowment, 49—discharge of debt or incumbrance, 43—keeping down interest on incumbrance, 49—what it may not provide, 49, 50—consideration not to be other than nominal, 49—certain debts, 50—certain expenses, 50—terms as to use of school, 50—time of instruction, 50—examination of school, &c., 50.

ASSESSMENT,

Public elementary schools rateable to relief of poor, 70—no uniform basis of, 70.

ASSISTANT OVERSEERS,

Duties as to publication, &c., of notices, precepts, &c., 33—expenses of, 33.

ATTENDANCE,

Average attendance, 130, 131, 268—how found, 126 *n* (*d*), 131—meaning of, 268—at district school not more than 60, 122—less than 30, 122—school deemed unnecessary, 122—exceptions, 122.

Bye-laws as to attendance of children at school, 259—obligation to make, 259—who to make, 259, 260.

Of children at school, 192—how enforced, 192, 230, 231—how proved, 111, 112—when child not required to

ATTENDANCE—*continued.*

attend school as condition of relief out of workhouse, 260—certificates of previous attendance, 227, 237—of proficiency, 237—fee grant to be paid on average, 136—half timer, 132—where infections are prevailing, 96 *n* (*a*)—irregular, 135, 244—fees cannot be charged by way of fine in case of, 135—non-attendance or irregular attendance, 244—legal proceedings for, 112, 244—authority of two members of board or local authority, 112, 244—number of attendances required to qualify for labour certificate, 84, 85—officer to enforce attendance at school, 175—reasonable excuses, 192, 193—register to be kept, 123—regular, 135—fees cannot be remitted by way of fine in case of, 135—school attendance committee to make bye-laws as to, 74—to enforce bye-laws, 74—school board no power to pay money for regular, 59 *n* (*k*)—standard of previous due attendance with respect to employment, 251—when scholar may be withdrawn on day of religious inspection, 99—what is, 254. *See also* "Compulsory Attendance."

ATTENDANCE ORDER,

Breach of, 88—penalty on, 88—child may be sent to an industrial school, 88—second breach of, 88—punishment, 88—when fine may be imposed for each breach, 88—child who does not obey, 105, 230—may be sent to an industrial school, 105—or day industrial school, 106—enforcement of school fees by, 107—where union extends into different counties, 91—before what justices parent to be summoned, 91—when to be made, 87, 230—what is, 87, 87 *n* (*l*).

AUDIT,

Accounts, 151, 185—accounts of school attendance committee, 78, 79—allowance and disallowance of items by auditor, 154—persons aggrieved by, 154—remedies of, 154—when appeal should be made, 154, 155—books, bills, vouchers, and documents, by whom to be produced, 153—clerk to school board to attend, 153—cost of appeal against auditor's surcharge, 155—illegal expenditure by clerk, 154—when no pecuniary liability attaches for illegal charges, 154, 155—improper payment of surcharge, 187—penalty on, 187—Local Govern-

AUDIT—*continued.*

ment Board to regulate, 157—mode of, 153—moneys, books, &c., certified to be due by auditor, 155—when to be paid over, 155—notice as to, 152—form of, 152—publication of, 152, 157—regulations as to, 216—by whom to be made, 216—school board accounts, 151—expenses of audit, 151—remuneration of auditor, 151—when to take place, 151, 152, 157—who to fix time, 152—where to be held, 152, 157—who may be present at, 153. *See also* "Accounts," "Auditor."

AUDITOR,

Bank pass-book of treasurer, 150—when to be laid before, 150—financial statement to be submitted to district auditor, 149, 150—powers of, 155—may call for vouchers, books, &c., 155—may cause a declaration to be signed, 155—penalty on refusal, 155—signing false declaration, 155—school board accounts, 151—remuneration of, 151—scale of charges, 151—to fix time of audit, 152—notice as to, 152—to sign balance sheet, 156. *See also* "Accounts," "Audit."

B.

BALLOT,

Ballot boxes, 22—what boxes to be used, 22, 23—no voting by ballot at meetings of board, 25—schedule of Ballot Act, 1872, only directory, 21—voting at school board election to be by, 20.

BANKRUPT,

Disqualified for being elected member of school board, 19—for holding office of, 19—exception, 19—when seat to become vacant, 19.

BILL,

Confirming order as to land taken compulsorily, 67—may be opposed, 67.

BIRTH,

Certificate of, 238. *See* "Registrar of Births and Deaths."

BOARD SCHOOL,

Fees at, 119—fixed by Board with consent of Department, 119—payment or remission of, 119.

BOARD SCHOOL—*continued.*

Free places in, 143—deficiency in, 143—inquiry as to, 143—to be "supplied with due despatch," 143—free school accommodation 142—when parent can claim, 142.

Grouping for financial assistance, 142—what moneys to be paid towards, 142—how regulated, 57—no religious catechism, &c., to be taught in, 57—parliamentary grant, 121. *See* "Parliamentary Grant"—religious instruction, 57—no bye-laws to prevent withdrawal of child from, 57—or require child to attend on certain days, 57—to be a public elementary school, 57—what is, 57. *See also* "Elementary School."

BOOKS,

When auditor may call for, 155—when to be handed over after audit, 155—penalty on refusing, 155—when proceedings to recover to be taken, 156—disposal on dissolution of board, 33—where average school fee included, 133—did or did not exceed 10*s*., 133—fee grant, 133—purchase of, for prizes, 59—refusing inspection, 114—to allow extracts to be taken, 114—transfer, &c., of, to school board, 43, 50.

BOROUGH,

Deficiency in school accommodation imminent, 12—school board may be created, 12—application to Department, how made, 12—election of school board, 18—who may vote, 18—disqualification of voters, 18—incorporation of, 262—effect on, 262, 263—parish divided by boundaries of, 194—parliamentary borough, what is 34, *n* (*e*)—regulations as to election of school boards, 12, *n* (*f*)—returns to Education Department, 52—who to make, 52—school attendance committee in, 71—what is, 158—when a school district, 4, 201.

BOROUGH FUND,

Expenses of school attendance committee to be paid out of, 76.

BORROWING, 28 *et seq.*

Application for loans when not entertained by Department, 29, 30—expenditure incurred without their sanction, 29, 30—arrears of principal and interest, 32—payment, how enforced, 32—conditions, 28—consent in case of board schools, 28—in case of industrial schools, 28—

BORROWING—*continued.*
what evidence required by Department before consent given, 28—without consent of Department, 29, 30.
Industrial school, 32—towards establishing, building, and maintaining, 32—towards alteration, enlargement, or rebuilding, 32—towards the purchase of land, 32—consent of Secretary of State required, 32—loan borrowed in open market, 28, 29—no loan from Commissioners for a shorter period than eighteen months, 31—
London, school board for, 38, 184—for what purposes, 38—limit to, 38—when may be exceeded, 38—repayment, 38—stock, creation of, 38—on mortgage, 28, 30—formalities as to, 30—Public Works Loan Commissioners, conditions on which loan is granted, 29—as to school, 22—central hall, 29—rooms for extra subjects, 29—loan, when to be repaid, 29—plans of premises, 28—to be approved by Department, 28—repayment, 28—over what period it may be extended, 28.
Purposes for which school board may borrow, 28, 28, *n* (*f*)—may not borrow, 28—by school board, 184—in respect of industrial or day industrial school, 101, 102, 258—for what purposes, 258—security, 28—school fund and local rate, 28. *See also* "Loan."

BUILDING,
Day industrial school, 101, 103—industrial school, 101, 102—school by board, 59, 121, *n* (*e*).

BURGESS,
Election of school board, 18—disqualification, 18.

BUSINESS,
Of school board, 25—what required to be stated in notice, 25—regulations as to, 25.

BYE-LAWS,
To apply to all children between 5 and 13, 93—to receive approval of Education Department, 82—previous publication of, 82—inspection by ratepayers, 82—to be sanctioned by Order in Council, 82—to be set out in appendix to next annual report of Department, 82.
Attendance of children at school, 74, 192, 193, 259—school attendance committee to make, 74—to enforce, 74—compulsory attendance, 40—failure of board to

BYE-LAWS—*continued.*

make bye-laws, 40—to be deemed "in default," 40—compulsory attendance in all districts, 90, 259—obligation to make, 259—refusal to make bye-laws relating to, 90—local authority to be deemed in default, 90—who to make, 259, 260—compulsory attendance when school attendance committee deemed "in default," 42—constructive non-attendance of child, 94—smallest deviation from regular attendance, 81—to be strictly enforced, 91—consequence of not being so enforced, 91—"to cause the child to attend school," 81—power of board to make, 81—restriction on power, 81—half-time attendance under, 85—local attendance committee no power to make, 91, 92—of local authority when school board takes its place, 79—bye-laws to continue in force, 79—not to be *ultra vires*, 92—illustration of bye-laws being *ultra vires*, 92, 93—offences, 79—where jurisdiction extends into different counties, 79—before what justices to be summoned, 79, *n* (*h*).

"Parent" who is, 97—when parents very poor, 94—parish having no separate school board, but being a contributory district, 72—who to make bye-laws in, 73—penalty on breach, 82—how recovered, 82—penalty and costs not to exceed 5*s*., 82.

Proceedings to enforce observance of, 112—reasonable excuses, 81, 93—efficient instruction received elsewhere, 81—hindrance through sickness, &c., 81—absence of public elementary school, 81—what are, 93, 98.

As to religious observance or instruction, 57.

School attendance committee in urban sanitary district, 71—when school board appointed in district, 71—bye-laws may continue in force, 71—school attendance committee to make, 89—cannot make bye-laws to remit or pay school fees, 89, 90—power of school attendance committee, 236—school board may remit school fees under, 90—section 74 of Act of 1870, 92—power to make bye-laws under, 92.

Summonses for infringement, how served, 91—truant child, 94—what may provide, 81—imposition of penalties, 81—remission of fees, 81—revoking or altering previous bye-laws, 81—reasonable excuses, 81—what not to contain, 81—any infringement of "conscience clause," 81

BYE-LAWS—*continued.*
—where union extends into different counties, 91—before what justices to be summoned, 91—Where to have the force of law, 82—who to enforce, 90.

C.

CASUAL VACANCY. *See* "Vacancy."

CERTIFICATE,
Authentication of, 33—duties of overseers as to, 33—service of, 33—proof of, 33—publication of, 33—partly in print, partly in writing, 33—tearing down, injuring, &c., 33—penalty, 33.
Of birth, for purposes of Act, 238—of character to be trustworthy, 123—of child having "reached the standard" of education, 83, 111—previous attendance at school, 90, 227, 237—child is or is not attending school, 111.
Education Department, evidence of, 115—how proved, 2—as to apportionment expenses, and loans when board in default, 188—expenses incurred by school attendance committee, 76—when to be sent, 76—false or forged certificate, 113, 114, 220—employment of child on, 113—"labour certificate," 84, 84 *n* (*c*)—proficiency of children, 90, 237—school board "in default," 41—expenses of board, 41, 42—service on board, 108.

CERTIFIED EFFICIENT SCHOOL,
What is, 84, *n* (*d*), 248.

CERTIFIED INDUSTRIAL SCHOOL, 99 *et seq.* *See* "Industrial School."

CERTIORARI,
Audit of auditor, 154—persons aggrieved by, may apply by writ of, 154—order forming or dissolving a united school district may be removed into High Court, 16, *n* (*d*).

CHAIRMAN,
Of school board, 24—appointment of, 24—equality of vote, 24—casual vacancy, 25—has a second or casting vote, 24—school board accounts to be signed by, 151—school

CHAIRMAN—*continued.*
board for London, 37—salary of, 37—of board, minute to be signed by chairman, 115—woman may be elected, 24 *n* (*i*).

CHAPELS,
Publication of notices, &c., 33. *See also* "Religious Worship, Place of."

CHARGES. *See* "Expenses."

CHARITABLE TRUSTS ACTS,
School board may sell, lease, or exchange land or school-house under, 69, 70—construction of Acts, 70.

CHARITY,
When school board may accept property of, 146—may become trustees of, 145—not to be inconsistent with principles of section 14 of Act of 1870, 146.

CHARITY COMMISSIONERS,
School endowments, 195—application by Education Department, 195.

CHELSEA,
School board division, 34—boundaries of, 34—number of members, 34.

CHILD,
Age of, 111, 113—misrepresentation to mislead employer, 113—onus of proof on defendant, 111—no penalty on child falsely representing as to age, 113.
Attendance at school, 192, 259—bye-laws as to, 259—how enforced, 192—how proved, 111, 112—against whom attendance order may be made, 230—disobedience of, 230—when not required to attend school, as condition of relief out of workhouse, 260—when not to be refused admission to school, 122.
Births and deaths of, 90—registrar to supply information concerning, 91—certificates of births, 91.
Bye-laws to apply to children between 5 and 13, 93—certificate that child is or is not attending school, 111—has reached standard of education, 111—what children liable to be sent to industrial school, 104, 105—day industrial school, 105, 106, 107—expenses of sending, 105—in company of rogues, reputed criminals, &c., 87—when to be ordered under an "attendance

CHILD—*continued.*

order" to attend a certified efficient school, 87—excuses against order being made, 87—nearest school two miles distant, 88—absence of child due to sickness, &c., 88—efficiently instructed elsewhere than at school, 93.

Day industrial school, during what hours child may be detained in, 106—"Dunce's pass," 84 *n* (*e*)—duty of parent to educate, 83 — statutory declaration, 82—employment, exception to prohibition of, 228—when may be lawfully employed in husbandry and ingathering of crops, 86—what degree of proficiency required before sent to work, 84—labour certificate, 84.

Free education, 142—when parent can claim, 142—neglect of education of, 89—local authority bound to investigate any case of alleged neglect, 89—whether school is efficient, 111—employment and education, 226—employed in husbandry, 88—ingathering of crops, 75—failing to attend school, 94—false or forged certificate to mislead employer, 113 — false representation by parent as to age, 113.

When fee may still be charged, 132, 133—may not be charged, 132.

Habitually wandering, or not under proper control, 87—"half-time," 83—half-time attendance under bye-laws, 85—under Factory Acts, 85.

Illegal employment of, 75, 76, 112—offence committed by agent or workman, 113—when officer of local authority may search place of employment, 75—penalty on illegal employment, 227.

Industrial school, sent to, 88, 230—for breach of attendance order, 88—when parent liable to contribute to maintenance of, 88, 89—when may receive "license" to live out of school, 89, 105, 106, 231—conditions of license, 89—by whom attendance of child is to be supervised, 106—non-attendance when voluntary school inspected in religious matters, 99—parent to provide food for, 94, *n* (*b*)—when parent receives relief out of workhouse, 246—school fees, to whom to be paid, 246—pauper, provisions respecting, 245—plea of "no boots," 96—regulation as to employment of, 227—restrictions on employment of, 83—exceptions, 86—where school is two miles distant, 86—where school more than three miles distant, 93.

CHILD—*continued.*

Sickness, &c., of, 93—sickness of father or mother, 96—may be produced before court of summary jurisdiction, 110—uninstructed child, 80—provisions against employment of, 80—vagabond child, 96—"wastrel clause," 87—wastrel and idle child, 80—stringent provisions against, 80—what children may be employed, 83—may not be employed, 83—who is, 83 *n* (*f*), 248—who is the "parent," 96, 97—whose elementary instruction is habitually neglected, 87—under Act of 1891, 130. *See also* "Scholar."

CHURCH,

Publication of notices, &c., 33. *See also* "Religious Worship, Place of."

CHURCHYARD,

Closed for burials, 60—when site may be used for erection of school, 60.

CITY OF LONDON,

School board division, 34—boundaries of, 34, 35—number of members, 34—who may vote at election of board, 35—women cannot vote, 36.

CLERK,

Appointment of, 26—two or more boards may arrange, 26—salary, 26—gratuities illegal, 26, *n* (*c*)—tenure of office, 26—*quo warranto* not willingly granted, 26, 27—authentication of certificates, notices, &c., by, 33—duties as to accounts, 149—to enter authorities for receipts and payments, 149—precepts issued by board, 149—minutes relating to money transactions, 149—what books to keep where no accountant appointed, 149—duties as to audit, 153—illegal expenditure disallowed, 154—no pecuniary liability attaches, 154, 155—to school attendance committee, 243.

COAL,

Where average school fee includes, 133—did or did not exceed 10*s.*, 133—fee grant, 133.

CODE,

Minutes of Education Department, 121—conditions contained in, 121 *et seq.*—Mr. Lowe's Revised Code of 1862, 120.

COMBINATION,
Grouping of schools for financial assistance, 142—school boards, 17, 182—agreement as to, 17—what to contain, 17—purposes of combination, 17—accounts, how to be kept, 149.

COMMISSIONERS,
See "Charity Commissioners," "Public Works Loan Commissioners."

COMMON,
Valuer appointed for inclosure of, 60—may allot land for site of school, 60.

COMMON SCHOOL FUND,
Power to contribute fee grant to, 267—what is, 220. *See also* "Fund," "School Fund."

COMPENSATION,
Land taken compulsorily for school sites, 64—when may be settled by arbitration, 64, 65—when by justices, 64—when by verdict of jury, 64.

COMPULSORY ATTENDANCE,
"Attendance Order," 88—breach of, 88—bye-law, what to contain, 81—bye-laws take notice of smallest deviations from regular attendance, 81—certificates of proficiency and previous attendance, 90—regulations by Education Department, 90—when board to be deemed in default as to, 40—uninstructed child, when not to be employed, 80.
Compulsion optional, 80—indirect, 80, 83—universal direct 80, 89, 90—how enforced, 83—local authority to enforce measures of indirect compulsion, 85—when local authority delays making bye-laws, 90—to be deemed "in default," 90—when first introduced, 80.
Non-attendance, constructive, 94—what is, 94, 95—non-attendance, 93—reasonable excuses, 81, 93—child under efficient instruction, 81, 93—no school within three miles, 81, 93—sickness, &c., of child, 81, 93—depending upon particular circumstances, 93—illustrations of, 93–98.
"Parent," who is, 97—poverty of parent, 94—when payment of fees a condition precedent to attendance, 95—restriction on employment of children, 83—in school board districts, 80—in all school districts, 80—wastrel and idle children, 80. *See also* "Attendance," "Bye-laws."

CONDITIONS,
Of parliamentary grant to elementary school, 121—125.

CONSCIENCE CLAUSE,
Of Act of 1870, 5—condition of parliamentary grant, 121—recognition of, 121—school attendance committee to report any infraction of, 74—school efficient without, 7.

CONSTITUTION,
London school board, 35—school board, 108, 172, 173—school board in united school district, 180.

CONTRACT,
Of member with board, 18—when a disqualification, 18—when not a disqualification, 19—of school board, 108—when under seal, 108—when not under seal, 108, 109—when proved by minutes of board, 109.

CONTRIBUTIONS,
When boards have combined, 17—to special common fund, 77, 78—day industrial school, 100, 101—out of what fund paid, 101—grouping of schools for financial assistance, 142—contributions to each school, 142—not to be treated as "income from other sources" for purposes of the 17*s.* 6*d.* limit, 142—industrial school, 100, 101, 172—out of what fund paid, 101—London school board, a body of persons to require contribution payable out of rates, 38.
Of one school district to another, how raised, 117.

CONTRIBUTORY DISTRICT,
Accommodation in one district sufficient for neighbouring district, 17—procedure as to, 17—publication of notices, 17—application for, 17—public inquiry, 17—election of member by, 18, 181—notices and public inquiry, 181—order forming, how evidenced, 17—legal validity of order, 17—revocation or alteration of, 17 — parish, under the jurisdiction of what committee, 72—who to make bye-laws, 72—proposal to form, 55—persons feeling aggrieved by, 55—may claim a public inquiry, 55—provision or maintenance of schools, 181—school fund in, 183.

CONVEYANCE,
Of school premises to school board, 49, 50. See "Transfer."

COOKERY,
Teacher of, 142.

CORPORATE BODY,
School board to be a, 10.

CORRESPONDENT,
Fee grant to be paid to, 139—who s, 139 *n* (*b*).

CORRUPT PRACTICES,
At elections, 198, 212—disqualification of persons guilty of at election, 18, 19—at school board election, 18—member of board guilty of, 19.

COSTS. *See* "Expenses."

COUNTY,
Union extending into different counties, 91—before what justices offender to be brought, 91.

COURT OF SUMMARY JURISDICTION. *See* "Summary Jurisdiction Court of."

CRIME,
Member guilty of, 20—when to disqualify, 20—not obeying an "order" of justices, 20—meaning of, 20.

CRIMINALS,
Reputed, child in company of, 87.

CROPS. *See* "Ingathering of Crops."

D.

DAMAGES,
When members of board not liable for, 25, 107.

DAY INDUSTRIAL SCHOOL,
Alteration, enlargement, &c., of, school board may contribute to, 100—certificate, 103—withdrawal of, 103—child in, 102—may be sent to, instead of a reformatory, 103—how received in, 103—contribution towards maintenance of child, 103—out of parliamentary vote, 103—parent or guardians of poor liable to contribute to maintenance of child, 102, 103—what children may be sent to, 104, 105, 106—proceedings by whom to be taken, 104—before whom to be taken, 104—expenses, 104—conditions of contributions, 234—conditions if recommended by Secretary of State, 103—to be laid before Parliament, 103—

DAY INDUSTRIAL SCHOOL—*continued.*

during what hours child may be detained, 106—an efficient school, 100—establishment of, 232—furnishing of, 102—inmates of, 100—contributions by guardians towards maintenance of, 100—consent of Local Government Board required, 101—by sanitary authority, 100—by school board, 100—by town council, 100—management of, 100—contributions towards, 100—parliamentary vote, 103—conditions of, 103—power of prison authority, 102—power of school board, 102—for what purposes to be used, 103, 106—may be established by order of Secretary of State, 102—what is, 102—when first started, 100. *See also* "Industrial School."

DEATHS. *See* "Registrar of Births and Deaths."

DEBT,

On school-house, &c., 28—board may borrow to discharge, 28—for what debts managers personally responsible, 44—on transfer of school to board, 44. *See* "Borrowing," "Loan."

DEFAULTING SCHOOL BOARD, 39—42. *See* "In Default."

DEFINITIONS,

"Annual subscriber," 46—attendance, 254—attendance order, 87 *n* (*l*)—average attendance, 131, 132, 268—Board school, 57—borough, 158—certified efficient school, 84, 248—child, 83, *n* (*f*), 248—child under Act of 1891, 130—common fund, 220—correspondent, 139 *n* (*b*)—court of summary jurisdiction, 221—day industrial school, 102—Education Department, 1, 158—"Efficiency," 59—"Efficient" school, 6, 7—elementary education, 4, 5, *n* (*b*)—elementary school, 5, 159—employment in case of parent, 248—fee grant, 265—"full time employment," 96—guardians, 220—industrial school, 100.

Managers, 57, 159—Managers of day industrial school, 102—managers of industrial school, 100—managers of public elementary schools, 68.

Metropolis, 34, 158—parent, 87, 96, 97, 99, *n* (*f*), 159—"parishioners" in metropolis, 36—parliamentary

DEFINITIONS—*continued.*
borough, 34—parliamentary grant, 120, 159—parish, 158—person, 158—public elementary school, 5—ratepayer, 159 — rating authority, 116, *n* (*d*), 201—"reached the standard," 83.
School fund, 182—school-house, 159—school provided by a school board, 44—school year, 208—Secretary of State, 249—"17*s.* 6*d.* limit," 127, 128—"suitable" school, 6, 7—Summary Jurisdiction Acts, 220—teacher, 159—union, 220—vestry, 159.

DECLARATION. *See* "Statutory Declaration."

DELEGATION,
Of powers of school board to managers, 57—except power of raising money, 57—under what Acts, 57, *n* (*k*).

DEPARTMENT,
School consisting of more than one, 130—application of fee grant, 130—when an elementary school, 5. *See also* "Education Department," "Science and Art, Department of."

DEPOSIT,
When board has no office, 82, *n* (*b*)—books of account, 153—statements of accounts, 153—public notice as to, 153—of bye-laws at board office for inspection, 82—when to be made, 82—notice of deposit, 82.

DISORDERLY PERSONS,
Child in company of, 87.

DISQUALIFICATION,
Disqualification in election of member, 23—when not to vitiate proceedings of board, 23—electors of school board, 18—members of school board, 18 *et seq.*, 174—member or person who holds place of profit, &c., 18—exceptions, 19—who is guilty of corrupt, &c., practices, 19—who becomes bankrupt, 19—who absents himself from board meetings, 20—who is imprisoned for a crime, 20. *See also* "Qualification."

DISSOLUTION,
Of school board, 189, 249—application for, 32—when to be made, 33—grounds for, 32—board in default, 32—not performing their duties, 32—not providing sufficient school supply, &c., 32, 33—under certain circumstances

DISSOLUTION—*continued.*
affect subsequent formation, 33—school board in district about to be included in united school district, 15—united school district, 179—evidence of, 16, 180.

DISTRESS WARRANT,
When to be issued, 82—what evidence to be adduced, 82 *n* (*e*)—costs of, 82.

DISTRICT. *See* "Contributory District," "School District."

DISTRICT AUDITOR, 149. *See* "Auditor."

DOCUMENT,
Education Department, 248—evidence of, 114, 115—how proved, 2—printed under superintendence of Stationery Office, 115 *n* (*e*)—how received in evidence, 115 *n* (*l*)—authentication of, 33—on dissolution of school board, 33—publication of, 33—defacing, &c., 33—penalty, 33—what documents to be received in evidence, 115.

DRAWING,
Instruction in, 123—teacher in, 142.

"DUE DESPATCH,"
Free public school accommodation to be supplied with, 143.

DUTY,
Local authority to fulfil, 91—school board neglecting, 40—deemed "in default," 40.

E.

ECCLESIASTICAL CORPORATION,
Sale of land for school sites, 63—where purchase money over 20*l.*, 63—where under 20*l.*, 63.

EDUCATION,
Certificates of, 227—children, law as to employment and education of, 226—declaration of duty of parent, 83, 226—elementary education, meaning of, 4, 5 *n* (*b*)—free, 129—various attempts at, 129—neglect of child's education, 89—local authority bound to investigate any alleged case, 89.

EDUCATION DEPARTMENT,
Borrowing by school board, 28—bye-laws of school board, 82—when to give approval of, 82—change of site of school, 59—consent, when and where not required for

EDUCATION DEPARTMENT—*continued.*
transfer of premises to board, 43—contributory district 17—order forming, 17—revocation or alteration of, 17—discontinuance of school, 59—dissolution of school board, 32—when, 32, 33—may dissolve school board in district included in united school district, 15—arrangements as to property, &c., 45, 49—documents issuing from, how received in evidence, 115—election of school board, 210—orders as to, 210, 211—endowment, 195—application by Department to Charity Commissioners, 195—establishment and re-constitution, 1—fees cannot be raised without sanction, 135—fees charged exceeding maximum allowed by Act of 1891, 135—head of, Lord President of Council, 1—Vice-President, 1—salary of, 1—may be a member of House of Commons, 1—land taken compulsorily for school sites, 66. *See* "Land."
London School Board, alteration of number of members, 38, 39—may make order regulating elections in the Metropolis, 36—Metropolis, public school accommodation, 36—minutes of, 2—when to have the force of law, 2—number of members of board, 18—Orders Act of 1874, 260, 270—orders and documents, 248—orders, minutes, certificates, &c., 196—evidence of, 196—orders, validity of certain, 270—future orders, 270—powers of, 1—to issue orders, requisitions, and regulations, 1, 2—public inquiry, 56—costs of inquiry, 56—compulsory purchase of land by school board, 166, 167—requisition, 196—effect of, 196—regulations as to form of certificates of proficiency, 90—previous attendance, 90—to be laid before Parliament, 90—report (annual) to be laid before Houses of Parliament, 3, 200—returns as to sufficiency and efficiency of accommodation, 51 *et seq.*—school accommodation, 10—sufficiency or deficiency rests with, 9—deficiency in, 161—to determine whether a deficiency exists in, 10, 11—how ascertained, 11—if school necessary, their decision to be published, 11—what decision is to contain, 11—appeal against decision, 11—who may appeal, 11—where a public inquiry may be held, 11—final notice, 11—what to contain, 11—school attendance committee in default, 75—separate school attendance committee in urban sanitary district, 92—school board in default 21, 39-42—school board, application to establish, 14—

EDUCATION DEPARTMENT—*continued.*
circumstances to be considered, 14—number of members of, 10—statement of income and expenditure of school board, 156—cannot compel transfer of premises to board, 45—date of triennial retirement of members of board to be fixed by, 21—united school districts, 178—when to elect school board, 23—what is, 1, 158.

EFFICIENT,
Board to maintain schools in state of efficiency, 59—what is, 59—certified day industrial school is an efficient school, 100—certified industrial school is, 100—school must be, 124.

ELECTION,
School board, 173, 212—Board by Education Department, 23—board in school district, 18—united district, 18—contributory district, 18—small parish added to another parish, 18—of board to take place of board "in default," 42—what ballot boxes to be used, 22, 23—where more candidates nominated than members required, 20—casual vacancy in school board, 247, 255—rules as to, 255—conduct of, 18, 21—rules relating to, 21—23.
Corrupt, &c., practices at, 114, 198, 212—member disqualified through absence from meetings, 20—when eligible for re-election, 20—when no disqualification of or defect in, to vitiate proceedings of board, 23—disputes as to, determination of, 174—failure to elect at triennial election, 24—when Education Department may direct, 21—electors, 18—disqualification of, 18—expenses, 21—to be paid by board, 21—out of school fund, 21—fees at, 21, 22—how questioned, 23—by petition, 23—by *quo warranto*, 23—when cannot be questioned, 23—wilfully making or causing to be made an incorrect return, 114.
London School Board, 35, 205—when it takes place, 35—voting at, 35—rules for election of, 205, 206—when no members elected at, 24—Department may appoint another day for the election, 24—member guilty of corrupt, &c., practices at, 19—disqualification, 19—members by contributory district, 181—members of school board, 202, 223—rules respecting, 202, 204, 223—non-election of board, 40, 174—obstructing, 114—

ELECTION—*continued.*

wilfully contravening a regulation, 114—penalty for obstructing, 197—orders and regulations of Department as to, 211, 212, 222—for what period board elected, 18—polling stations, 22—number of, 22—when number may be increased, 22—presiding officer, 22—deputy, 22—no money for refreshments to be paid, 22—publications relating to, 21—questioning of, 212—when to be questioned, 212, 213—to be triennial, 21—school-house used for, 123—in united school district, 180—voting to be by ballot, 20—votes, counting of, 22—when to be done, 22—expense of, 22. *See also* "Municipal Election."

ELECTION PETITION, 23,
Limit of time, 23.

ELECTORS,
At school board election, 18.

ELEMENTARY EDUCATION,
Meaning of, 4, 5 *n* (*b*).

ELEMENTARY SCHOOL,
When department of a school is, 5—fees not exceeding 9*d.* per week, 5—meaning of, 5—parliamentary grant, 199—conditions of, 199, 200—power to take parliamentary grant, 200—transfer of, to school board, 43—what is 159—workhouse school is not, 5 *n* (*c*). *See also* "Board School," "Day Industrial School," "Industrial School," "Public Elementary School," "School," "Voluntary School."

EMPLOYER,
Exemption of, on proof of guilt of some other person, 244—when to produce child before court of summary jurisdiction, 110. *See also* "Employment."

EMPLOYMENT,
Age of child, who should state, 113—misrepresentation of age, 113—child, condition of employment, 83, 227—child under ten years of age, 83—over ten and under fourteen, 83—not having attained proficiency, 83—or not being a half-timer, 83—where child employed by parent, 248—what is employment, 248—where child has regularly attended at school, but has not obtained certificate

EMPLOYMENT—*continued.*

of proficiency, 84—when child may be employed in particular branch of industry, 87—child without a certificate, if having "reached the standard," 83—child employed on false or forged certificate, 113—of child in husbandry and ingathering of crops, 75—when need not attend school, 75—law as to, 226 *et seq.*—regulation as to, 227, 228—of children, restrictions on, 83—educational conditions to be complied with, 83—what degree of proficiency required, 84—failing this, how a certificate may be obtained, 84.

Employer of child, who is, 83—when parent is, 83—when employer includes parent, 113—when employer should give all information as to illegal employment, 113—exception to prohibition of employment of children, 228—false information, 114—punishment for giving, 113—"full time employment," 96—meaning of, 96—half-time attendance under Factory Acts, 85—under bye-laws, 85—illegal employment, 112—committed by agent or workman, 113—liable in penalty, 113—when employer not liable, 113—exemption of employer on proof of guilt of someone else, 244—by whom Act to be enforced, 227—labour certificate, 84—by whom to be granted, 84—penalty on illegal employment, 83, 227—places of, 75—when officers may enter, 75—must have a justice's order, 75—to examine whether child is employed, 75—penalty on obstructing officer, 75—power of officer of local authority to enter place of, 240—standard of proficiency in reading, writing, and arithmetic, 251—previous due attendance, 251—when proceedings not to be taken against employer, 113—Restrictions or exceptions:—During employment no school within two miles, 86—employment during holidays, &c., 86—does not interfere with instruction, 86—during a period exempted by special notice of local authority, 86, 87.

ENDOWMENT,

Application of small endowments, 193—when Education Department deemed to be "persons" interested in, 70—when Education Department may apply to Charity Commissioners as to, 195—governing body to frame a scheme, 145—object of scheme, 145—to submit scheme to Education Department, 145—how funds should be applied,

ENDOWMENT—*continued.*

146—public elementary schools enabled to benefit by, 145—purposes of, 146—not to be inconsistent with principle of section 14 of Act of 1870, 146—power of school board to accept, 215—real or personal property given in trust, 145, 146—scheme, what it may provide, 146—school board may become trustees of, 145—transfer of school to board, 49, 145.

EPIDEMIC,

Closing of school in consequence of, 126. *See also* "Infectious Diseases."

ESTIMATE,

By school attendance committee of expenses to be legally incurred, 76—to be sent to guardians quarterly, 76.

EVENING SCHOOL,

Fee grant not made to, 130, 130 *n* (*c*)—number of meetings in school year, 123—parliamentary grant towards, 122—when teacher need not be certificated, 122.

EVIDENCE,

Age of child, 111—onus of proof, 111—arrangement for transfer of premises to board, 49—attendance of child, 111, 112—child is or is not attending school, how proved, 111—has reached standard of education, 111—Documentary Evidence Act, 1868, when to apply, 2—documents printed under the superintendence of the Stationery Office, 115, *n* (*l*)—what documents received in, 114, 115—dissolution of united school district, 16, 180—formation of united school district, 16, 180—minute of board received in, 25, 107, 109, 114, 115—when minute may prove a contract, 107—new board appointed by Education Department in place of board in default, 41—expenses of such board, 41, 42—orders, &c., of Education Department, when proved by producing copy, 2—order forming contributory district, 17—orders, minutes, certificates, &c., of Education Department, 2, 115, 196—how proved, 115—public inquiry, 55.

EXAMINATION, 5, 120.

EXCHANGE,

Land, &c., of school board, 69, 70—what land may be exchanged, 69, 69 *n* (*i*).

EXPENDITURE,

Accounts to be kept by managers, 123—not allowed, 125—school treats, 125—Sunday schools, 125—purposes not educational, 125—entry of sum unlawfully expended, 155—penalty on, 156—normal rate of, for school, 128—when school exceeds, 128—17*s.* 6*d.* limit, with reference to, 128—statement of school board's income and expenditure to be printed, 156—to whom to be sent, 156.

EXPENSES,

Attending compulsory purchase of land, 167—audit of school board accounts, 151—board cannot borrow for purpose of meeting current expenses, 28—of board "in default," 41—certificate as to, 41—paid out of school fund, 41—when board may pay expenses of candidates for office, 26—breach of bye-law, 82—distress warrant, 82—combination of school boards, 17—expenses of managers, 17—counting of votes, 22—of education, 210—fees at elections, 21—legal, when members of board not liable for, 107—local authority, 240—incurred prior to date of transfer of school, 44—by whom borne, 44—when members indemnified against law costs, 25—when to be stated in business notice of meeting, 25—persons appointed in place of defaulting school attendance committee, 75—public inquiry, 11, 56—security as to, 11—as to taking lands compulsorily, 67—scale of, 67—become a charge on school fund, 68—how paid, 68—interest on, 68—preparation of appeal against auditor's surcharge, 154—rate book, copying, 22—returning officer at election, 21—charges by, 21—school attendance committee, 76, 240—cannot be incurred without consent of council, guardians, or authority, 76—out of what fund to be paid, 76—legally incurred, 76—to be certified to guardians in prescribed form, 76—what particulars to give, 76—estimate to be sent quarterly, 76—when certificate to be sent, 76—on receipt of certificate guardians to pay, 76—out of what fund, 76, 77—to be paid out of a special common fund, 77—in contributory district, 73—of managers appointed by urban sanitary authority, 78—out of what fund payable, 78—payment of, 78, 79—school board, 182—how met, 182, 183—school board in default, 188—certificate of Department, 188—school board election, 21—taking poll at school board elec-

EXPENSES—*continued.*

tion, 21—incurred by school board officers in causing child to be sent to industrial school, 105, 106—to be paid out of school fund, 105—of school, managers to pay, 122—what may not be included in an arrangement for transfer of school, 50. *See also* "Expenditure."

F.

FACTORY ACTS,

Half-time attendance under, 85.

FEE. *See* "Fee Grant," "Fees."

FEE GRANT, 129—145—acceptance of, 131, 132—effect of, 139—illustrations, 139, 140—where average of fees not in excess of 10*s.*, 132—when parliamentary grant not fallen due before January, 1891, 132—no fee to be charged, 132—where school fees above 10*s.*, 134—managers may abolish fees, 134—establish certain free places, 134—charge reduced, fees all round, 134—average rate of fees not to be exceeded, 132, 134—when fee may still be charged, 132, 133—what fee to be charged, 132—when fees continue to be charged, 134—arrangement to be specific, 135—to apply to definite classes of scholars, 135—Act of 1891, 129—aim of, 130—may be said to be universal in its operation, 129—key to interpretation, 130—amount of, 130—how calculated, 131—application to raise fees, 140—conditions, 140, 141—if raised, may be included in grant, 141—average attendance, 130, 131—how found, 131, 132—attendance of half-timer, 132—to be paid on, 136—when school is new, 136, 137—child, who is, 136—course which managers may follow with reference to, 130, 131—acceptance of, 131—postponement of, 131—refusal of, 131—four distinct classes of schools, with reference to, 133.

Conditions, 265—failure to comply with conditions, 135—department of a school, 130—in aid of cost of elementary education, 130—at public elementary school, 130—not at evening school, 130—equality of treatment, 268—where fees cannot be charged without consent of Department, 140—fees cannot be raised without sanction of Department, 135—fees, errors as to "average rate," 135—how raised, 135—fees, estimation or reduction of, 130.

FEE GRANT—*continued.*

Free school accommodation, 130 *n* (*f*) — grouping of schools for financial assistance, 142, 267—inadvertence as to charge for fees, 135—instalments to be paid in, 136—how calculated, 136—when last instalment to be paid, 136, 137—to whom to be paid, 139—first three instalments to be paid as they become due, 137, 138—amount of, 138—fourth instalment how calculated, 138—limit of fees in schools receiving, 265—when average rate for fees, books, &c., not in excess of 10*s.*, 133—managers not compelled to accept, 130—miscalculation as to fees actually charged, 135—usual excuse, 135—how paid when school is new, 136, 137—no preference or advantage to school on the ground that it is or is not supplied by school board, 129, 130.

Payment of quarterly instalment, delay in, 137—inconvenience of delay, 135—to be paid quarterly, 136—when fourth instalment to be paid, 136—refusal of, 131—power to contribute grant to common school fund, 267—prohibition of charges in certain schools receiving, 266—when voluntary schools may pay grant into common fund, 144—fund how distributed, 144—what is, 265.

FEES,

To constables for service of summonses, 91—school, abolition of, 132, 133—when no fee to be charged on acceptance of fee grant, 132—when fee may still be charged, 132, 133—no action to recover arrears of, 106—adjustment of, 135—application to raise, 140—conditions, 140, 141—sufficient free public accommodation, 141—owing to change of population in district, 141—or educational benefit of district, 141—to be laid before Parliament, 141—if raised may be included in fee grant, 141—cannot be charged by way of fine in case of irregular attendance, 135—cannot be remitted by way of reward for regular attendance, 135—average rate not to be exceeded, 132, 134—of children how fixed, 164—consent of Department to, 122—cannot be raised without sanction of Department, 135—school fees account, 150 — what to contain, 150 — who to keep, 150—where fees cannot be charged without

FEES—*continued.*

consent of Department, 141—when new schools not to charge, 133.

Exceeding amount allowed by Act of 1891, 135—miscalculation as to, 135—extinction or reduction of, 130—at board school, 119—fixed by board with consent of Department, 119—guardians may pay, 95—guardians have power, in case of children at board and voluntary schools, to pay fees not exceeding 3*d.* a week, if they reside in their jurisdiction, 120—guardians may pay fees of pauper children, whose parents are not in workhouse, 120—maximum in elementary school, 5—fraudulently obtaining payment of, 243—penalty on, 243—fraudulently procuring payment or remission of school fees, 114—limit of fees in schools receiving grant, 265—non-payment of school fees, 94—payment of, 171—how enforced, 107—payment of, for poor parents, 229—payment where parent receives relief out of workhouse, 246—to whom to be paid, 246—payment by guardians, 119, 120, 243—of what children, 120—parent not to be deprived of any franchise, &c., 120, *n* (*a*)—payment charged to parish, 120, *n* (*a*), 243—when payment of fees a condition precedent to attendance, 94—power in certain cases to modify limit, 266—prohibition of charges, 266.

Reduction of, 132, 133—registrar on supplying information as to births and deaths of children, 90—certificates of birth, 91—remission by board, 119—not deemed parochial relief given to parent, 119, *n* (*i*)—any one wrongfully demanding a fee, 114—penalty, 114.

At school board elections, 21, 22—where no contest, 21—where a contest, 21—school board may remit, 95, 119—on what grounds, 119—for what period, 119.

FELONY. *See* "Crime."

FINANCE, 116, *et seq.*

Where board has delegated management of, to managers, 150—what accounts to be kept, 150—grouping of schools for financial assistance, 142.

FINSBURY,
School board division, 34—boundaries of, 34, 35—number of members, 34.

FORGERY,
Of certificate, 114, 220—punishment, 114.

FRANCHISE,
Payment of school fees of child not to deprive parent of, 120 *n* (*a*)—remission by school board, 119 *n* (*i*).

FREE EDUCATION,
When parent can claim for child, 142—when parent living in free school district may still have to pay for education of child, 144 *n* (*b*). *See also* "Fee Grant," "Fees," "Free Places."

FREE PLACES,
Deficiency of, 143—inquiry as to, 143. *See also* "Fee Grant," "Fees," "Free Education."
In public elementary schools, 143—provision of, 143, 267—school board failing to supply deficiency, 143.

FREE SCHOOL,
Establishment of, 172.

FUND,
Common fund where schools grouped for financial assistance, 142—when fee grant to be paid into common fund, 144—distribution of fund, 144—expenses of school attendance committee. *See also* "Borough Fund," "School Fund," "Sinking Fund," "Special Common Fund."

FURNITURE,
Disposal where board dissolved, 33—industrial school, 32—furnishing industrial or day industrial school, 102—transfer to board, 50.

G.

GIFTS,
For educational purposes, 215—power of board to accept, 215—land for elementary schools, 70—exempted from Mortmain Acts, 70.

GRANT. *See* "Fee Grant," "Parliamentary Grant, "Special Grant."

GRATUITIES,
To board officers illegal, 26 *n* (*c*). *See* "Salary."

GREENWICH,
School board division, 34—boundaries of, 35—number of members, 34.

GROUPING,
Advantages of grouping, 142—committee for this purpose, 142—common fund, 142—schools for financial assistance, 142—what schools may be grouped, 142—what moneys to be devoted to, 142.

GUARDIANS OF POOR,
Application of Education Acts to, 243—application of Poor Law Acts to educational purposes, 79—union extending into several districts, 79—child in industrial school, 258—maintenance of, 258—clerk of school attendance committee, 243—day industrial school, 100—contribution towards, 100—industrial school, 100—contribution towards, 100—consent of Local Government Board required, 101—officers of, 33—duties as to publication, &c., of notices, precepts, &c., 33—expenses, 33—when to appoint school attendance committee, 71—when school board audit to be held in board room, 152—school fees, payment by, 95, 119, 120—who are, 220.

H.

HACKNEY,
School board division, 34—boundaries of, 34—number of members, 34.

HALF-TIMER,
Attendance at school, 132—how calculated for purposes of fee grant, 132.

HER MAJESTY'S INSPECTOR,
Not to examine in religious knowledge, 6—public elementary school to be open at all times for, 6, 161—time-table, 122—visit of, 123—postponement of visit, 126—voluntary schools, 98—who is, 159. *See also* "Inspection."

HIRE,
By school board of premises which are private property, 59, 60.

HOME STUDIES,
Bye-laws as to, when *ultra vires*, 92—teacher cannot insist on child doing, 107.

HUSBANDRY,
Children lawfully engaged in, 75, 86—when excused from school attendance, 75.

I.

ILLEGAL EMPLOYMENT,
Of child, 113. *See* "Employment."

ILLEGAL PRACTICES. *See* "Corrupt Practices."

ILLNESS,
Absence from meetings consequent upon, 20—when to disqualify member, 20—temporary illness, 20—when eligible for re-election, 20.

IMPRISONMENT,
Forgery of certificate, 114—uttering forged certificate, 114—fraudulently procuring payment or remission of school fees, 114.

INCOME,
Accounts to be kept by managers, 123—for what purposes to be applied, 124—whence derived, 116—endowments, 145—limit of gross average annual income, 145—grouping of schools for financial assistance, 142—managers of voluntary schools, whence derived, 116—remedy of school board when rating authority makes default, 183—school board in united school district, 117—board to apportion amount required to meet deficiency in school fund according to rateable value of each district, 117—school fund, 182—17*s.* 6*d.* limit, 142—"income from other sources," 142—statement of board's income and expenditure to be printed, 156—to whom to be sent, 156.

IN DEFAULT,
Appointment of members of new board, 41—certificate of appointment, 41—is conclusive evidence of appoint-

IN DEFAULT—*continued.*
ment, 41—of expenses, 41—of loan, 41—who may be appointed members of new board, 41—tenure of office, 41—may be remunerated for their services, 41—out of school fund, 41—failing to supply school accommodation, 12—when board is, 12, 23, 24, 39, 91, 143, 162, 187—failure to supply deficiency in accommodation, 39——breach of regulations, 39—non-compliance with requisition of Department, 40—neglecting duty as "local authority," 40—failure to make certain bye-laws, 40—other cases, 40—Proceedings on default, 187—expenses incurred, 188—certificate of Education Department as to appointment, expenses, and loans, 188—when board may be dissolved, 32—Department may direct members of board in default to vacate their seats, 42—vacancies to be filled by new election, 42—when default remedied, 41—proceedings with reference to election of new board, 41—failure of board to "maintain and keep efficient" schools, 59—failure of board to supply free places, 143—failure of board to supply necessary additional accommodation, 59—inquiry by Department, 40—local authority, 239—failure of local authority to make returns, 190—when members appointed by Education Department to cease to be members, 41—who to take their place, 41—when number of members reduced to less than number required for a quorum, 21—members of board deemed to have vacated their seats, 41—order of Department appointing a new board, 40—Department may remove any member so appointed, 40—filling up vacancies, 40, 41—position of members so appointed, 40, 41—when board to provide schools after requisition, 162—school attendance committee, 42, 75—for what causes may be deemed, 42—persons appointed by Department to perform duties of, 75—for what period appointed, 75—not subject to control of council or guardians, 75—remuneration and expenses, 75—how recovered, 75—Education Department to report annually to Parliament cases of defaulting committees, 75—security that provisions in Acts be carried out, 39.

INDUSTRIAL SCHOOL, 232,
Act of 1879, 257, *et seq.*—borrowing, 32—towards alteration, enlargement, or rebuilding, 32—towards establishing,

INDUSTRIAL SCHOOL—*continued.*

building, and maintaining, 32—towards the purchase of land for, 32—not towards the furnishing, 32—certified industrial school, 99—child in, 102—parent or guardian of poor child liable to contribute to, 102, 103—child sent to, 87, 88—for breach of attendance order, 88—when parent liable to contribute to maintenance of child, 88, 89—sum not to exceed 5*s.*, 89—Secretary of State may remit, 89—when child may receive a license to live out of, 89—condition of license, 89—children, contribution towards maintenance of, 103—out of parliamentary vote, 103—children, how received in, 102, 103—what children may be sent, 74, 104, 105, 230—proceedings to be taken before two justices, 104—who to direct proceedings, 104—not duty of clerk of guardians, as such, to prosecute, 104, *n* (*a*)—expenses of, 105—when school attendance committee to take proceedings, 74—two classes of, 99—contribution to, 172, 258—an efficient school, 100—establishment of, 172—establishment or building, &c., of, 101 — by school board, 101—furnishing of, 102—when guardians may contribute to maintenance of child, 258—inmates of, 100—contribution by guardians, 100—consent of Local Government Board required, 101—sanitary authority, 100—school board, 100—town council, 100—expenses of contribution, how paid, 101—license to child to live out of school, 105, 106, 231—when to be granted, 105—conditions of, 106—by whom attendance of child is to be supervised, 106—managers of, 100—management of, 100—contributions towards, 100—meaning of, 32, *n* (*c*)—rating of, 102, *n* (*b*)—purchase of land for, 101—by school board, 101—for what purposes to be used, 103, 104—when school board may establish, build or maintain, 100—whose consent necessary, 100—powers as to, 100—school board, consent of Secretary of State required, 101—what is, 100. *See also* "Day Industrial School."

INDUSTRIAL SCHOOLS ACT,

Penalties in may be modified, 103—powers of school board as to, 258.

INFANTS,

Instruction of, 123.

INFECTIOUS DISEASES,
Non-attendance of children in consequence of, 96, *n* (*a*)—school closed in consequence of, 96, *n* (*a*). *See also* "Epidemic."

INFORMATION,
Giving false information, 220.

INGATHERING OF CROPS,
Children engaged in, 75, 86—when exempt from school attendance, 75.

INQUIRY,
By Department when board declared "in default," 40—deficiency of free public school accommodation, 143—formation of school board after inquiry, 162—without inquiry, 162, 214—by inspectors of returns, 190—appointment of, 190. *See also* "Public Inquiry."

INSPECTION,
Accounts of managers of voluntary schools, 98—account of income and expenditure of school, 24—books of account of Public Works Loan Commissioners, 32—who may inspect, 32—extracts from, 32—books, &c., of school board, 197—of bye-laws deposited at office of board, 82—who may inspect, 82—Penalty for hindering a ratepayer from book of school board, 114—public elementary school, 6—to be at all times open for Her Majesty's inspector, 6—of rate, 114—overseers refusing inspection of, 114—rate book, 212—register of mortgages, 30—when none in religious knowledge, 6—school board accommodation, 153—schools as to returns, 190—school board books, &c., 153—voluntary schools, 194—voluntary schools by Her Majesty's inspector, 98—voluntary schools by inspector not one of Her Majesty's inspectors, 194—voluntary school in religious matters, 98, 99.

INSPECTOR,
Of factories or mines, 227—illegal employment of child, 227—of returns, 190, 191—appointment by Department, 53—duties, 53—to inquire into accuracy and completeness of return, 53—efficiency, &c., of school, 53—when there is no return, 53—when to examine school-house, &c., 53—refusal to permit inspector to examine, 53, 54, 191—inspection of voluntary schools, 194. *See also* "Her Majesty's Inspector."

INTEREST,
Arrears of, 32—costs, &c., of inquiry as to taking lands compulsorily, 68—how paid, 32.

INSTALMENT,
Fee grant to be paid in quarterly, 136, 137—how calculated, 136—when last instalment to be paid, 136, 137—first three to be paid as they become due, 137, 138—amount of, 138—fourth instalment, how calculated, 138—payment of fourth, when, 137—delay in, 137—inconvenience of delay in, 137—to whom to be paid, 139.

J.

JURISDICTION,
Local authority extending into different counties, 79.

JURY,
Land taken for school sites, 64—compensation when determined by, 64, 65—to be summoned by sheriff, 65—when special jury may be had, 65.

JUSTICES,
Child sent to an industrial school by, 89—where jurisdiction of authority extends into different counties, 79—before what justices offences may be heard, 79, *n* (*h*)—land taken for school sites, 64—compensation when to be settled by, 64—where union extends into different counties, 91—it may be heard before justices of either county, 91. *See also* "Summary Jurisdiction, Court of."

L.

LABOUR CERTIFICATE,
What children affected by, 85—what is, 84—who may apply for, 84, *n* (*c*)—to whom application made, 84, *n* (*c*)—what evidence required, 84, *n* (*c*).

LAMBETH,
Division of, 263, 264—East Lambeth division, 34—boundaries of, 35—number of members, 34—West Lambeth division, 34—boundaries of, 35—number of members, 34.

LANCASTER, DUCHY OF,
Sale of land for school sites, 62.

LAND,

Purchase otherwise than by agreement, 215—when taken otherwise than by agreement, 55—public inquiry may be held, 55—board may purchase for school accommodation, 61—compensation, 61—compulsory purchase by school board, 63, *et seq.*, 165, 166, 215—compensation, formalities, &c., inquiry by Department, 66—when to be held, 66—order of Department, 66—confirmation by Parliament, 66—legal validity, 67—where order refused, 67—costs, expenses, &c., how dealt with, 67—scale of costs, 67, 68—a charge on the school fund, 68—formalities to be observed, 65, 66—deposit of plans, 65—publication of notice, 65—service of notices, 65—on whom to be served, 65—how served, 66—petition to Education Department, 66—what to state, 66—to be accompanied by a statutory declaration, 66—under Lands Clauses Consolidation Acts, 63—construction of Acts, 63, 64—cannot take land for collateral purposes foreign to undertaking, 64—rule applicable to taking land, 64—compensation, 64—when may be settled by justices, 64—when by arbitration, 64, 65—when by verdict of jury, 64—gift or bequest of, for elementary schools, 70—exempted from Mortmain Acts, 70—for day industrial school, 102—for industrial school, 32, 101—lease by school board, 59.

Purchase by agreement under Lands Clauses Consolidation Act, 1845, 61—who may agree with owners, &c., 61—compensation to be paid, 61—valuation, 62—purchase money to be deposited in bank, 62—under School Sites Acts, 62—who may convey, 62, 63—by gift, sale, &c., 62—common land, 62—Chancellor of Duchy of Lancaster may convey, 62—when land ceases to be used for purposes for which it was conveyed, 62—what number of sites may be granted, 63—form of grant, 63—where purchase money exceeds 20*l.* in case of ecclesiastical property, 63—when under 20*l.*, 63—purchase by managers of public elementary schools, 68, 168—under Lands Clauses Consolidation Acts, 68, 69—construction of Acts, 69—under School Sites Acts, 69—purchase by school board, 59, 61—may be by agreement or compulsorily, 61—sale by member of board, 19—when no disqualification, 19—school board may sell, lease, or exchange,

LAND—*continued.*
69, 70—under Charitable Trusts Acts, 69—what land may be sold, &c., 69, *n* (*i*)—under School Sites Act, sale or exchange of lands by boards, 63—what quantity of land may be purchased, 62, 63. *See also* "Site."

LANDS CLAUSES CONSOLIDATION ACTS,
Purchase of land for school sites, 61, *et seq.*—by agreement, 61—compulsorily, 63, 68—by managers, 69.

LAW COSTS,
When members of board not liable for, 107. *See also* "Expenses."

LEASE,
Land, &c., by school board, 59, 69, 70—what land may be leased, 69, 69, *n* (*i*)—premises to school board, 43—by school board of premises which are private property, 59, 60—of school-house, 168.

LEGAL PROCEEDINGS, 106, 115.
Age of child, 111—onus of proof, 111—appearance by school board, 107—bye-laws, infringement of, 91—summons for, 91—member of local authority should not adjudicate on, 91—before a court of summary jurisdiction, 109, 110—defendant, who may appear for, 112—evidence of minutes of board, 107, 109, 115—evidence, orders, minutes, &c., of Education Department, 2—fees, no action to recover arrears of, 106—reason for rule, 106, 107—forgery of certificate, 220—formation or dissolution of united school district, how evidenced, 16—fraudulently obtaining payment of fees, 243—penalty on, 243—giving false information, 220—how undertaken, 218—regulations as to, 218, 220—irregular attendance, 112—who to take proceedings, 112—condition of, 112—local attendance committee no power to take, 91, 92—member contracting with board, 19—penalty, 19—how enforced, 19, *n* (*k*)—when not liable, 19—member of board should not adjudicate on board summons, 112—when members indemnified against costs and damages, 25—minutes of board, when may prove a contract, 109—when not to be undertaken without authority of two members of board or local authority, 244—non-attendance of child at school, 112, 230, 231—who to take proceedings, 112,

LEGAL PROCEDINGS—*continued.*
231—conditions, 112—what proceedings may be taken, 112—school board, 196—appearance by, 196—whether school is efficient, 111—ex-teacher refusing to give possession of premises, 27. *See also* "Summary Jurisdiction, Court of;" "Summary Proceedings."

LIABILITIES,
Of board about to be dissolved, 33.

LICENSE,
To child in industrial school to live out of school, 89, 106, 231—condition of granting, 89, 106—by whom attendance of child to be supervised, 106.

LIMIT,
See "17*s.* 6*d.* Limit."

LOAN,
When board in default, 41, 188—may be raised to defray expenses, 41, 42—certificate of Department, 188—of money by member of board, 19—in case of re-transfer of school, 51—by school board, 213—for what purposes, 213. *See also* "Borrowing."

LOCAL ATTENDANCE COMMITTEE,
Appointment of, 91—duties of, 91—number of members, 92—no power to make bye-laws or take legal proceedings, 91, 92—rules as to, 254, 255—who may be members, 92. *See also* "School Attendance Committee."

LOCAL AUTHORITY,
Bye-laws, enforcement of, 90—neglect of child's education, 89—bound to investigate any case of alleged, 89—when children to be received in industrial school on recommendation of, 102, 103—duties of, 71—to enforce compulsory attendance, 71—to fulfil their duties, 91—to enforce measures of indirect compulsion, 86—failure to perform duty, 238, 239—in default, 91—effect of subsequent appointment of school board, 243—expenses of, 240—jurisdiction extending into different counties, 79—jurisdiction of school board, 71—of school attendance committee, 71—officers of, 239—officer may enter certain places of employment, 75—must first obtain an order from justice of peace, 76—may examine whether any child is employed therein, 75, 76—penalty on ob-

LOCAL AUTHORITY—*continued.*
structing officer, 76—power of officer to enter place of employment, 240—to enforce prescribed penalties, 89—when inexpedient to do so, 89—proceedings as to non-attendance of children at school, 231—registrar to supply information as to births and deaths of children, 90—fee for, 91—certificates of births, 91—fee for, 91—returns by, 189, 190, 247—mode of obtaining, 189—proceedings on default, 190—may obtain particulars from registrar of births and deaths, 54—when to make returns to Department, 52, 53—remuneration to persons employed, 52—mode in which returns are obtained, 52—failing to make, 53—school attendance committee is, 78—school board is, 40, 70—failure to fulfil their duty, 40—to be deemed "in default," 40—when school board appointed for same district, 79—when authority to cease to act, 79—bye-laws of authority to continue in force, 79—security for provisions of Act being carried out, 9—summonses for alleged infringement of bye-laws to be served by police, 91—fees to policemen, 91—what is, 70. *See also* "School Attendance Committee," "School Board."

LOCAL GOVERNMENT BOARD,
Audit of school board accounts, 156—may make regulations as to, 156, 157—persons aggrieved by audit may appeal to, 154—when appeal should be made, 154, 155—school board to send copy of statement of their income and expenditure, 156.

LOCAL RATE,
Different kinds of, 201. *See also* "Rate."

LONDON,
Accommodation (additional) in, how supplied, 8. *See also* "City of London," "London, School Board for," "Metropolis."

LONDON GAZETTE,
Orders, &c., of Education Department, appearing in, 2, 3—evidence of, 3.

LONDON, SCHOOL BOARD FOR,
Accommodation (public school), supply of, 36—requisition sent by Education Department, 36—accounts, 148 *et seq.* *See* "Accounts"—area of, 34—borrowing by, 38, 184—for what purposes, 38—limit to, 38—when may be exceeded, 38—stock, creation of, 38—repayment, 38

LONDON, SCHOOL BOARD FOR—*continued.*
a body of persons to require contributions payable out of rates, 38—chairman of, 37, 178—may be elected from members of board or not, 37, 37, *n* (*k*)—may be paid a salary, 37, 178—common seal, 35—constitution of, 35—a body corporate, 35—Education Department may make an order regulating elections in metropolis, 36—election of, 34, 35, 175-178, 205—by whom elected in City, 35—in other divisions of the metropolis, 35, 36—election, general, 35—rules for, 205, 206—when it takes place, 35—voting at, 35—formation, 34, 175-178—provisions relating to, 34—jurisdiction of, 34—Lambeth, division of, 263, 264—members, alteration of number, 178—application for alteration, 38—grounds for, 39—who may make, 38—number of members, 34, 37, 37, *n* (*k*), 178—alteration of number, 38—when, 39—when number reduced, 39—when number increased, 39, *n* (*k*)—Metropolis, divisions of, 34, 209—number of members for each division, 34—what is, 34—name of, 35—payment of amount specified in precept, 37—how enforced, 37, 38—has a perpetual succession, 35—quorum, 24—not less than nine, 24—returns to Education Department, 52—school fund, 37—deficiency in, 37—rate, how levied, 37, 38—women in City cannot vote for members, 36. *See also* "Metropolis."

M.

MAINTENANCE,
Child in industrial school, 258—of school-houses, &c, 58, 59.

MANAGERS,
Day industrial school, 102—industrial school, 100—public elementary school, 68—acceptance of fee grant, 133—courses that may be followed, 133, 134—public elementary school, accounts when to be published, 98—inspection of, 98—may take advantage of Act of 1891, 129—to apply grant, 125—fee grant to be paid to correspondent, 139—inspectors of returns entitled to inspect, &c., school-house, &c., 53—not compelled to accept fee grant, 130—what courses may be adopted, 131—notice of sanitary authority as to preventing spread of disease, 124—closing of school, 124—to fulfil conditions of parliamentary grant, 125—what property they can transfer, 44, 45—purchase of

MANAGERS—*continued.*

land by, 168—may purchase land compulsorily, 68—form of conveyance, 69—re-transfer of school by board to managers, 171—returns to Department, 52, 53—duty as to filling up forms, 53—when to make returns to school board, 54—failure to make, 54—difference as to reasonableness of information required, 55—school not to be conducted for private profit, 122—not to be farmed out to teachers, 122—service of notices, &c., on, 108—transfer of school to board, 43, 169—only to relieve them from responsibility of maintaining it, 44 — arrangement for transfer with board, 45—how made, 45, 46—for what debts managers personally responsible, 44—to report to Department on objections, &c., to transfer of trustee not a manager, 47. *See also* "Voluntary School."

Appointed by school board, 57, 163, 208—disqualification of, 18—exception, 19—penalty, 19—number, when appointed by board, 57—board may remove, 58—when board "in default," 58—chairman, election of, 58—absence of, 58—constitution or powers of, 58—alteration of, 58—meetings of, 58—adjournments of, 58—proceedings of, 25, 58, 208—how regulated, 58, 208—proceedings not to be invalidated by vacancies in number, 58—questions to be determined by majority of votes, 58—chairman to have a casting vote, 58—quorum of, 58—resignation, 58—written notice of, 58—school board may delegate powers to, 57—when management of finances delegated to, 150—accounts, how kept, 150—who are, 57, 159.

MARYLEBONE,

School board division, 34—boundaries of, 35—number of members, 34.

MEETING,

Day school in school year, 123—evening school in school year, 123—school board, 24—regulations as to, 24—school board, presumption that it has been duly convened and held, 25, 115.

MEMBERS,

Election of, 223—rules respecting, 223—London school board, 178—alteration of number, 178—school board,

MEMBERS—*continued.*
when liable for acts as such, 107—when not liable, 107 — should not adjudicate on board summons, 112—disqualification of, 174—rules respecting election and retirement of, 202-204. *See also* "School Board."

METROPOLIS,
Divisions of, 34, 35, 209—returns to Education Department, 52—who to make, 52—school board in, 34-39, 175-178—a school district, 4, 201—valuation list in, 216—what is, 34, 35, 158. *See also* "London, School Board for."

MINUTES,
Appointment of officer of board may be by minute, 109—of board receivable in evidence, 25, 107, 109, 114, 115—Education Department, 2—evidence of, 2, 115, 196—to regulate conditions of parliamentary grant, 2, 121—when to have the force of law, 2—meeting of board, 25—authentication of, 25.

MISDEMEANOR. *See* "Crime."

MONEYS,
Found due by auditor when to be paid over, 155—penalty on refusal, 155—when proceedings to be taken to recover, 156.

MORTGAGE,
When Commissioners unable to pay off, 31—rule to be followed, 31—repayment, 30, 31—place of, when agreed, 30—when not agreed, 31—notice as to, 31—when mortgagee unknown, 31—school board may borrow on, 30—form of, 30—consideration to be stated, 30—interest, 30—to be stamped, 30—register of, 30—open to inspection, 30—transfer of, 30—form of, 30—register of transfer, 30—when mortgage to be registered, 30—on school premises, 44—transfer of premises, 44—when mortgagee protected, 44—when premises cannot be legally mortgaged, 44.

MORTMAIN,
When school board may accept real property, 146—law of mortmain not affected, 146—gift or bequest of land for elementary schools, 70—Acts do not apply, 70.

MUNICIPAL ELECTION,
Member of board guilty of corrupt, &c., practices at, 19—disqualification, 19. *See also* "Election."

N.

NEEDLEWORK,
Instruction in, 123.

NEWSPAPER,
Notice as to election need not appear in, 21. *See* "Advertising."

NON-ATTENDANCE,
Constructive non-attendance, 94. *See also* "Attendance," "Compulsory Attendance."

NOTICE,
Authentication of, 33—as to audit, 152—form of, 152—publication of, 151—when children may be employed in husbandry, &c., 86, 87—as to contributory districts, 17—publication of, 17—as to formation of contributory district, 181—deposit of statement, &c., of accounts, 153—of Education Department, evidence of, 115, 196—how proved, 2—as to public school accommodation required, 11, 161—what to contain, 11—elections, 21—publication of, 21—for purposes of Elementary Education Acts, 217.
Land taken compulsorily for school sites, 65, 165—publication of, 65, 165—service of, 65, 165—on whom to be served, 65, 66—as to paying off mortgage, 31—overseers, duties of, 33—publication of, 21, 33, 65, 165, 195, 217—by school board, 196—nature of, 196—service of, 196—of school board meeting, 25—a four days' notice, 25—what business must be stated in, 25—service of, 33, 195—service on school board, 108.
Sittings of public inquiry, 55.
Tearing down, injuring, &c., 33—penalty, 33.

O.

OBJECTIONS AND REPRESENTATIONS,
To proposed transfer of school premises, 47, 48—by trustee, not a manager, 47—by persons who have contributed to establishment of school, 48.

OFFENCES,
Prosecuted before a court of summary jurisdiction, 109, 110. *See also* "Legal Proceedings," "Penalty," "Summary Proceedings."

OFFICE,
When board may provide, 60, 247—requirements to be satisfied, 60—borrowing, 60, 61.

OFFICER,
Of local authority, 75, 239—when may enter places of employment, 75, 240—of school attendance committee, 73—remuneration of, 73—who may be appointed, 72—must be twenty-one years of age, 73, *n* (*k*)—when relieving officer may be appointed, 73, *n* (*l*) — of school board, 109, 175—appointment of, 25, 26, 109, 175—not liable to stamp duty, 25, *n* (*p*), 26—may be made by minute, 109—must be, 21, 73, *n* (*k*)—board may pay expenses of candidates, 26—school board officer's expenses in sending child to industrial school, 105—to be paid out of school fund, 105—removable at pleasure, 26.

ORDERS,
Of Education Department, 1, 115, 248, 269—when deemed to be duly made, 2—when *ultra vires*, 2—evidence of 2, 115—dissolving a united district, 16—may be removed into High Court, 16, *n* (*d*).
Orders Act of 1874, 269—validity of certain orders, 270—future orders, 270—election of school board, orders as to, by Department, 211, 212—confirmation of orders, 211, 212.
Forming contributory district, 17—how evidenced, 17—legal validity of, 17—revocation or alteration of, 17—forming united district, 16—what to contain, 18—may be removed into High Court, 16, *n* (*d*)—by Department as to taking land compulsorily for school sites, 66, 67—when order has legal validity, 67—bill confirming order, 67—may be opposed, 67. *See also* "Certificates," "Notices."

OVERSEERS,
To assist returning officers, 212—failing to assist returning officer, 114—duties as to publication, &c., of notices, precepts, &c., 33—expenses of, 33—to allow inspection

OVERSEERS—*continued.*
of rate books, &c., 212—when a rating authority, 201—to receive copy statement of board's income and expenditure, 156—refusing inspection of rate, 114—when to make returns to Education Department, 52—special common fund, 77—orders calling for special contributions, 77—to whom contribution orders to be addressed, 78—to pay out of poor rates the sums called for, 78—what accounts to keep, 78—when to be collected as a separate rate, 78.

OXFORD,
Local board district a school district, 4, 201—provisions as to, 198.

P.

PARENT,
Age of child, 113—false representation as to, 113—child sent to industrial school, 88—liable to contribute to maintenance of, 89—Secretary of State may remit sum ordered to be paid, 89—when child not required to attend school as condition of relief out of workhouse, 260—conscience clause, 5—duty of, to educate his child, 83, 226—employment of child by, 248—what amounts to, 248—when deemed the employer of his child, 83, 113 — to provide adequate food for his children, 94, *n* (*b*)—habitually and without reasonable excuse neglecting to provide instruction for child, 87—parent to be warned, 87—may be summoned before court, 87—mother may be liable as, though father living, 97, 98—when excused from liability for non-attendance of child at school, 93, *et seq.*—must use "reasonable efforts," 95—pauper, not in workhouse, 120—payment of school fees for poor parents, 120, 229—poverty of, 120—poverty, when excuse for non-attendance of child, 94—a test question, 97, *n* (*g*)—receiving relief out of workhouse, 246—payment of children's school fees, 246—to whom to be paid, 246—remission on payment of school fees, 119—not deprived of franchise, &c., 119 *n* (*i*), 120 *n* (*a*)—sickness of, no excuse for non-attendance of child, 96—when to produce child before court of summary jurisdiction, 110—what the term includes, 97—who is, 87, 96, 97, 99, *n* (*b*), 159.

PARISH,
Charge of money for school fees, 243—a contributory dis-

PARISH—*continued.*

trict, 72—under the jurisdiction of what school attendance committee, 72—who to make bye-laws, 73—expenses of committee, 73—deemed too small, to act as separate parish in united district, 16—may be added to another parish, 16—which vestry ratepayers to attend 16—school district, 4—divided by boundaries of boroughs, 194—election of school board, 18—who may vote, 18—disqualification of voters, 18—group of, when a school district, 4—part contained in school district, 249—provision as to, 249—rateable value, how ascertained, 195—rateable value, what is, 118—returns to Education Department, 52—who to make, 52—school attendance committee in, 71—when a school district, 4, 201—small parish added to another parish, board how elected, 18—small parishes in united school district, 181—union of detached parts of parishes, 214—what is, 158.

PARISHIONERS,

In Metropolis, who are, 36.

PARLIAMENT,

Annual report of Education Department, 3—Education Department to report annually cases of defaulting school attendance committee, 75—cases of application to raise fees, to be laid before, 141.

PARLIAMENTARY ELECTION,

Member of board guilty of corrupt, &c., practices at, 19—disqualification, 19.

PARLIAMENTARY GRANT,

When additional grant may be made, 126—application of grant, 125—basis of, 121—not made in aid of building, enlarging, &c., school, 59, *n* (*h*), 99, 121—condition of 121–125, 199, 235, 236—where contained, 121—not to require school to be connected with religious denomination, 121—religious instruction to be given in school, 121—condition, no child to be refused admission except on reasonable grounds, 122—school not to be unnecessary, 122—time-table to be approved by inspector, 122—conditions not complied with, 125—conscience clause to be recognised, 121—day school

PARLIAMENTARY GRANT—*continued.*
to meet 400 times during school year, 123—evening school 45 times, 123—exceptions, 123—conditions of day industrial school recommended by Secretary of State, 103 — to be laid before both Houses, 103 — epidemic in district, 124 — when school to be closed, 124—conditions, income to be properly applied, 124—principal teacher to be certificated, 122 — exceptions, 122, 123—publication of inspector's annual report, 124—religious subjects, grant not to be made in respect of instruction in, 125—all returns to be made, 124—school conducted as public elementary school, 121, 121, *n* (*d*)—school not to be conducted for private profit, 122—school to be efficient, 124—school visited by inspectors, 123—school premises, &c., to be satisfactory, 123—contribution for fees of children who obtain certificates, 235—contribution to industrial schools, 103—conditions of, 103—when Department may refuse to make, 126—when grant becomes due, 126 —how made up, 120—when inspector's visit postponed, 126—instalment, when may be paid, 126—Mr. Lowe's Revised Code of 1862, 120—"payment by results," 121—power of schools to take, 200—public elementary school to be conducted according to conditions of, 6—receipt for, 124—by whom to be signed, 124—refusal of grant to unnecessary schools, 200—no preference to be given to any school that is or is not provided by board, 121—to what schools made, 121, 199—school unnecessary, 122—refusal of grant, 122—reasons to be laid before Parliament, 122—special grant, not to be included with reference to 17*s.* 6*d.* limit, 126—special grant, where school to receive, 122—the old system, 120 —objections to, 120—what is, 120, 159—when it begins to run, 125.

PAUPER CHILDREN,
Fees may be paid by guardians if parents not in the workhouse, 119 — provisions respecting, 245. *See also* "Child."

PAYMENT,
Expenses incurred by school attendance committee, 76, 78—when to be made, 76—by whom to be made, 76—out of

PAYMENT—*continued.*

what fund, 76, 77—when committee appointed by urban sanitary authority, 78, 79—expenses of, 78—school fees by guardians, 119, 120—to be charged to parish, 120, *n* (*a*)—school fees, how enforced, 107.

PENALTY,

Application of Act of 1873 to penalties, &c., 243—breach of an "attendance order," 88—breach of bye-law, 82—corrupt practices at election, 114—entry of sum unlawfully expended, 156—extracts from board book or documents, 114—obstructing an election, 114, 197—wilfully contravening an election regulation, 114—wrongfully demanding a fee, 114—fraudulently obtaining payment of school fees, 243—illegally employing child, 83, 113, 227—refusing inspection of board books or documents, 114—local authority to enforce prescribed penalties, 89—when inexpedient to do so, 89—member contracting for profit with board, 19—moneys, books, &c., refusal to hand over after audit, 155—wilfully tearing down, injuring, or defacing any notice, 33—on refusing or obstructing officer when searching premises in which child illegally employed, 76—order may be made instead of inflicting a penalty, 110—overseers refusing inspection of rate, 114—failing to assist returning officer, 114—improper payment of surcharge, 187—penalties in Industrial Schools Act may be modified, 103—person neglecting to comply with requisition of auditor, 155—wilfully making or signing false declaration, 155—recovery of, 198—recovered before a court of summary jurisdiction, 109, 110—incorrect return wilfully made, 114, 197.

PERSON,

Who is, withing meaning of Acts, 158.

PETITION,

Land taken compulsorily for school sites, 66—by whom presented, 66—what to state, 66—to be accompanied by a statutory declaration, 66.

PLAN,
Extravagant plans cannot be approved, 29—land to be taken compulsorily for school sites, 65—deposit of, 65—school premises, 28—when board intend to borrow, Department to approve, 28.

POLICE,
To serve summonses for alleged infringement of bye-laws, 91—fees for, 91.

POLL,
Deficiency in school accommodation, 13—poll of ratepayers as to, 13—by whom demanded, 13—how conducted, 14—voting by ballot, 14—expenses of taking, 21.

POLLING STATIONS,
School board election, 22—number of, 22—when number may be increased, 22.

POOR LAW ACTS,
How far applicable to educational matters, 79.

PRACTICES,
See "Corrupt Practices."

PRECEPTS,
Authentication of, 33—duties of overseers as to, 33—publication, 33—service, 33—defacing, &c., 33—penalty, 33—form and signing of, 25, 208—in metropolis, 37—payment of amount specified in, 37—how enforced, 37, 38.

PREMISES,
Occupied by ex-teacher, 27—recovery of possession, 27—school, to be in satisfactory state, 123—transfer of, to school board, 43. *See* "Transfer."

PRISON AUTHORITY,
Where board exercise power of, 215—industrial or day industrial school, 102.

PRIVY COUNCIL,
Committee on Education, 1—establishment of Education Department, 1.

PRIZES
When board may purchase, 59.

QUORUM,

School board, 24—not less than three, 24—in Metropolis not less than nine, 24—when none, 40—by reason of non-election, resignation, &c., 40—board deemed "in default," 40—school board managers, 58.

QUO WARRANTO,

Questioning school board election, 23 — limit of time, 23—not willingly granted against a board officer, 26, 27.

R.

RATE,

Deficiency in school fund to be raised out of, 182—inspection of rate book, 212—loans on security of, 28, 29—Metropolis, 37—when to be levied, 37—on what property, 37—valuation lists, 37—payment of amount specified in precept, 37—how enforced, 37, 38—payment of contribution out of, 38—school rate, no direction what officer appointed to collect school rates shall do with excess or to whom he shall account, 118—overseers refusing inspection of, 114—penalty on, 114—divided parish, overseers may levy separate rate on part of parish liable, 118—poor rate book to be produced when required by school board and copies made, 118—public elementary schools rateable to relief of poor, 70—no uniform basis of assessment, 70—board can compel rating authority to levy rate independent of their remedy of appointing an officer to collect it, 119—receipt of treasurer good discharge, 118—on refusal by local authority to pay, board may apply for a *mandamus*, 117—no provision for salary of officer appointed by board to collect rates, or for audit of its accounts, 118—board may appoint officers to collect rate on rating authority's default, 119—sum raised in place may be raised by officers appointed by board, 118—officers appointed by school board to collect rate have powers of a rating authority, 118—united school, contribution where paid by school board to be paid out of school fund, 117—school district contributing to expenses of another district, how contribution to be raised, 117—united school district, how raised in, 117—in united school district, 15. *See also* "Local Rate."

RATING,
Certified industrial school, 102, *n* (*b*).

RATEABLE VALUE,
How ascertained, 195—school rate ascertained by last rate valuation, 118.

RATING AUTHORITY,
Different kinds of, 201—members to receive copy of statement of board's income and expenditure, 156—remedy of school board when rating authority makes default, 183.

RATEPAYERS,
Appeal as to public school accommodation required in district, 11—may be present at audit, 153—may inspect books, &c., of school board, 197—inspection of accounts, 153—may take extracts, &c., of books, &c., 153—meeting to consider deficiency of school accommodation, 12, 13—when deficiency imminent, 12, 13—conduct of meeting, 13—when poll may be demanded, 13—who may demand poll, 13—taking of poll, 14—of small parish added to another parish in united district, 16—in what vestry to meet, 16—when to be furnished with statement of income and expenditure of school board, 156—who are, 13, *n* (*k*), 159—women are, 13, *n* (*k*).

REACHED THE STANDARD,
Meaning of, 83.

READING,
A branch of elementary education, 5, 5, *n* (*b*)—standard of proficiency, 251—for purposes of employment, 251.

REAL PROPERTY,
When school board may accept gift of, 145, 146—law of mortmain not affected, 146. *See also* "Property."

REFORMATORY SCHOOL,
Child may be sent to day industrial school instead of to, 103.

REFRESHMENTS,
Election of school board, 22—no money for, to be paid to presiding officer, 22—to returning officer, 22.

REASONABLE EFFORTS,

Parent to make, to cause child to attend school, 95—failure to make, 95.

REASONABLE EXCUSE,

Constructive non-attendance, 94, 95—employment of children, 230—fee grant, 135—miscalculation as to fees actually charged, 135—non-attendance at school, 81, 93, 193—efficient instruction received elsewhere, 81—hindrance through sickness, &c., 81—absence of public elementary school within three miles, 81—plea of "no boots" no excuse, 96—sickness of father or mother, 96.

REGISTER,

Of mortgages, 30—open to inspection, 30—of transfers, 30—of school to be kept, 123.

REGISTRAR OF BIRTHS AND DEATHS,

Not an officer of guardians of union, 73, *n* (*k*)—when to make a return of births and deaths to local authority, 54—fee for such return, 54—form, 54—returns to school board, 238—when to supply school attendance committee with returns of births and deaths, 74—fee for, 75.

Superintendent registrar not to make return, 75, *n* (*l*)—when to supply information to local authority as to births and deaths of children, 90—fee for, 91—certificates of births, 91—fee for, 91.

REGULATIONS,

Of Education Department, 2—when deemed to be duly made, 2—when *ultra vires*, 2—proceedings of managers, 58—by which school is to be conducted, 39, 40—breach of, 39—board deemed in default, 39, 40.

RELIEF OF POOR,

Public elementary schools rateable to, 70—no uniform basis of assessment, 70.

RELIEVING OFFICER,

When may be appointed school attendance officer, 73, *n* (*l*).

RELIGIOUS INSTRUCTION,

No religious catechism, &c., of any denomination to be taught in board school, 57—bye-laws, what to contain, 57—bye-laws being *ultra vires*, 92—inspection of voluntary school, 99—instruction in, 125—grant not made in respect of, 125—public elementary school, 160, 163.

RELIGIOUS WORSHIP, PLACE OF,

When attendance of scholar at place of religious worship not to be necessary, 5.

REMUNERATION,

Auditor, 151—member of new board appointed to take place of board in default, 41—out of school fund, 41—officers of school attendance committee, 73—persons appointed in place of defaulting school attendance committee, 75—registrar of births and deaths for making returns, 54—teacher, 26. *See also* "Salary."

REPAIRS,

Of school, 125.

REPRESENTATIONS,

See "Objections and Representations."

REPORT,

Annual, of Education Department, 3, 200—to be laid before both Houses of Parliament, 3, 200.

REQUISITION,

Of Education Department, 2, 196—effect of, 196—how proved, 2, 115—when deemed to be duly made, 2—when *ultra vires*, 2—Education Department requiring board to perform their duties, 40—failure to comply, 40—to be deemed "in default," 30. *See also* "Notices."

RETIREMENT,

Members of school board, 202—rules respecting, 202–204.

RE-TRANSFER,

School from board to managers, 50, 171—consent of Department necessary, 51—to whom to be made, 51—all interest, &c., to be conveyed, 51—proposal to re-transfer, how passed, 51—when school to cease to be a board school, 51—upon what trusts to be held, 51. *See also* "Transfer."

RETURNING OFFICER,

Duties at election, 22—incorrect return, wilfully making or causing to be made, 114—penalty, 114—overseer failing to assist, 114.

RETURNS, 51 *et seq.*

Accommodation, sufficiency and efficiency of, ascertained by, 51—annual return to Department from school, 124—how to be signed, 124—appointment of person to make, 217—to Education Department when called for, 51, 163—who are to make, 51, 52—failure to make, 53—forms to be filled up, 52—to whom to be sent, 52, 53—refusal to fill up, 53—how furnished, 53—information, how obtained, 52, 53—inspector of, 53—appointment, 53—duty, 53—inspectors of returns, 120—appointment, 190—inquiry by, 190—refusal to fill up forms or admit inspectors, 191—local authority to make, 51, 189, 190, 247—failure to make, 53, 189, 190—proceedings in default, 189, 190—when managers to make, 54—failure to make, 54—difference between managers and board as to whether information required is or is not reasonable, 54—to be referred to Education Department, 54—in Metropolis, 52—school board to make, 52—mode of obtaining, 189—penalty for making incorrect return, 197—persons appointed by Department to make, 51—registrars of births and deaths, to school board, 238—registrar of births and deaths to send particulars, 54—remuneration for making, 52—sanction of Department, 52—returning officer, &c., wilfully making or causing to be made an incorrect return, 114—penalty, 114—all returns called for must be made, 124—statistical returns to be trustworthy, 123—when school attendance committee to make, 74—by school board, 198—school board may call upon managers to make, 54—to supply forms for this purpose, 54—in school districts, 52—who to make, 52—by schools to school boards, 218—"stock-taking" of schools of every district, 52, *n* (*a*)—to be truly filled up, 54—what to contain, 51, 52.

RESIGNATION,

Of members of board, 40—no quorum, 40—board "in default," 40.

ROGUES,
Child in company of, 87.

RULES,
Election and retirement of members of school board, 202—204—local committee, 254, 255—resolution for application for school board, 204—school attendance committee, 255.

S.

SALARY,
Chairman of School Board for London, 37, 178—clerk to school board, 26—teacher, 26—treasurer, 26, 27—gratuities illegal, 26, *n* (*c*)—vice-president of Council, 1. *See also* "Remuneration."

SALE,
Books, school apparatus, &c., to school board, 43—land, by member of board, 19—land, for school sites, 61 *et seq.*—land, &c., by school board, 69, 70—what land may be sold, 69, 69, *n* (*i*)—parish property, 60—application of proceeds, 60—premises to school board, 43—of school-house, 168.

SANITARY AUTHORITY,
Notice to managers of school as to preventing of disease, 124—closing of school, 124—excluding scholars, 124. *See also* "Urban Sanitary Authority."

SCHEDULES,
To have same effect as if enacted in Act, 198, 248.

SCHEME,
Of endowment, 145 — public elementary school, 145 — evidence, how funds should be applied, 146—endowment, what it may provide, 146. *See also* "Endowment."

SCHOLAR,
When need not attend while school inspected in religious matters, 99—excluding from school, 122, 124. *See also* "Child."

SCHOOL,
Absence of school within three miles from home, 81—excuse for non-attendance of child, 81—attendance at, 175, 192—how enforced, 192—officer to enforce, 175—average

SCHOOL—*continued.*

attendance not more than 60, 122—in one district available for neighbouring district, 17—building, enlarging or fitting up, 12, *n* (*e*)—certified efficient school, 84, *n* (*d*), 248—two miles distant from child's home, 86, 87, 88—three miles distant from child's home, 93—when closed churchyard may be used as site, 60—conscience clause, 160.

Department of school, when an elementary school, 5, 130—when each department may be treated as a separate school, 130—fee grant, 130—discontinuance of, 59—consent of Department, 59—must be efficient, 111, 124—test of efficiency, 111—efficient without a conscience clause, 7—epidemic, closing of school, 124—equality of treatment of all schools as to fee grant, 268—expenses, managers to pay, 122.

Fee grant, 130—fee grant, payment of, when school is new, 136, 137—fee grant, 129 *et seq.*—no preference on ground that it is or is not supplied by school board, 129, 130—four classes as to fee grant, 133—those which refuse, 133—those whose fees are less than 10*s.*, or new schools, 133—those whose fees, including books, &c., exceed 10*s.*, 133—those whose fees exceed 10*s.*, 134—position of managers, 134—fees, payment or remission of, 119, 120—fees cannot be charged in new school without consent of Department, 140—charging fees over 10*s.*, may abolish fees, 134—may establish certain free places, 134—may charge reduced fee all round, 134.

Free, 129—poverty of inhabitants, 129—free places in, 141—when to be made, 141—grouping for purposes of fee grant, 142, 267—for mutual financial assistance, 142—what schools may be grouped, 142 — honour certificates abolished, 129—how often to be open during school year, 132—to be open at all times to Her Majesty's inspector, 161—inspector, visit and report of, 123—exception, 123—land for, gift or bequest of, exempted from Mortmain Acts, 70—limit of fees in school receiving fee grant, 265—maintenance and efficiency of, 164—to be kept by board, 164, 165—management and maintenance by board, 163—to meet not less than 400 times in school year, 123—neglect by school board of regulations of, 164—when new schools not to charge fees, 133.

Parliamentary grant, 121—began to receive parliamentary grant subsequent to 31 December, 1890, 140—fees can-

SCHOOL—*continued.*

not be charged without consent of Department, 140—power to take parliamentary grant, 200—powers of school board for providing, 165—premises, staff, furniture and apparatus to be satisfactory, 123—not to be conducted for private profit, 122—farmed out to teacher, 122—prohibition of charges in certain schools receiving fee grant, 266—regulations for conduct of, 160—repairs, 125—re-transfer from board to managers, 50, 51—site, change of, 59—consent of Department, 59—supply, 159—time table, 160—transferred to board, 50—to be managed as the board see fit, 50—to be deemed a school provided by the school board, 50—truant child, 94—unnecessary, 200—refusal of grant to, 200—not to be "unnecessary," 122—when not deemed unnecessary, 122. *See also* "Board School," "Day Industrial School," "Elementary School," "Industrial School," "Public Elementary School," "Supply of Schools," "Voluntary School," "Workhouse."

SCHOOL ATTENDANCE COMMITTEE,

Accounts, 78, 79—audit of, 78, 79—application of Acts to, 243—appointed annually, 71—by whom appointed, 71—at what time guardians to appoint, 72—how long to continue in office, 72—appointment by guardians, when must act for every parish in union, 74—appointment by urban sanitary authority, 241—may appoint local committees for different parishes, 74. *See* "Local Attendance Committee"—a power little exercised, 74, *n* (*e*)—duties of, 74—no power to make bye-laws, 74—not to take proceedings before court of summary jurisdiction, 74—what persons it may consist of, 74—rules regulating proceedings of, 74, *n* (*e*)—bye-laws, enforcement of, 90—to make, 89, 260—powers as to, 236, 260—casual vacancy in, 72—how filled up, 72—children liable to be sent to industrial schools, 74—when committee to take proceedings, 74—clerk of, 243—when committee of sanitary authority may elect members of committee of union, 71—number not to exceed three, 71—how fixed, 71—formation of new school board within district, 71—committee when to cease to exercise jurisdiction, 71—bye-laws of, 71.

Duties of, 71, 74—effect of subsequent appointment of school board, 243—elected guardian to take the place of elected guardian, 72—*ex officio* guardian the place

SCHOOL ATTENDANCE COMMITTEE—*continued.*
of *ex officio* guardian, 72—expenses, 76, 240—cannot be incurred without consent of council, guardians, or authority, 76—out of what fund to be paid, 76—expenses legally incurred, 76—to be certified to guardians in prescribed form, 76—what particulars to give, 76—estimate to be sent quarterly, 76—on receipt of certificate guardians to pay, 76—expenses, when a special rate in respect of, 78—when paid out of poor rate, 78—failure to perform duty, 239—husbandry, children engaged in, 75—when exempt from school attendance, 75—illegal employment of child, 227—"in default," 42, 75—failure to perform their duty under Act of 1876, 42—failure to make certain bye-laws, 42—persons appointed by Department to perform duties of committee, 75—for what period appointed, 75—remuneration and expenses of, 75. *See* "In default."

Local attendance committee, 91—appointment of, 91, 92—duties of, 92—a local authority, 71—to enforce measures of indirect compulsion, 85—number of members of, 72, 85—when appointed by guardians, 72—one-third to consist of *ex officio* guardians, 72—when no *ex officio* guardians, 72—when number may be altered, 72—officers, appointment of, 73—who may be appointed, 73—what consent required for appointment, 73—payment of, 73—in a union, clerk to guardians to be clerk, 73—where an assistant clerk, 73—remuneration of clerk, 73—of other officers, 73—officers of council or guardians may be appointed, 73—registrar of births and deaths not an officer of guardians, 73, *n* (*k*)—parish having no separate school board but being in contributory district, 72—under the jurisdiction of what committee, 72—to publish provisions relating to compulsory attendance, 85—proceedings of, 72—rules regulating, 72—provisions as to, 241—registrars to supply returns of births and deaths, 74—fee for, 75—returns by, 53, 74—when to make return to Education Department, 52, 53—to report any infraction of "conscience clause," 74—rules as to, 255—when appointed by urban sanitary authority, 71, 78—duties of, 71—to supersede committee appointed by guardians, 71—expenses out of what fund to be raised, 78, 79—school supply, duties as to, 9—special common fund, 77—separate school attendance committee, 92—appointment of, 92. *See also* "Local Authority."

SCHOOL BOARD,

Accommodation required, primary judges of, 8—when discretion absolute as to supply of additional, 8—to provide additional school, 58—accounts, 148 *et seq.* *See* "Accounts"—duties of clerk, 149—when an accountant appointed, 149—application for formation of, to Education Department, 12, 14, 204—circumstances to be considered by Department, 14—orders and regulations relating to, 222—questioning resolution for, 212, 213—regulations as to passing of resolutions, 14, *n* (*a*), 222—rules respecting resolution for, 204, 205—attendance, no power to pay money for regular, 59, *n* (*k*)—to publish provisions relating to compulsory attendance, 85—to enforce measures of indirect compulsion, 85.

Board appointed by Department, 41—in borough, how established, 12—borrowing by, 28, 32, 184. *See* "Borrowing"—in respect of industrial school, 101—building of school, 59—parliamentary grant cannot be applied to, 59, *n* (*h*)—business of, 24—business when required to be stated in notice, 25—bye-laws, enforcement of, 90—bye-laws as to compulsory attendance, 90—as to remitting school fees, 90—candidate, no qualification prescribed for, 18—casual vacancy in, 21, 24, 247—how filled up, 21, 247, 248—rules as to election to fill casual vacancy, 255—ceasing to exist, 40—board deemed "in default," 40.

Chairman, 24—appointment of, 24—vice-chairman, 24—appointment of, 24—combination of boards, 17, 149, 182—accounts of boards, 17—how to be kept, 17—accounts how to be kept, 149—expenses of managers, 17—out of what fund to be paid, 17—to provide, maintain, and keep efficient schools in their districts, &c., 17—agreement to combine boards, 17—to provide for appointment of managers, 17—proportion of contribution to be paid, 17—and other matters, 17—constitution of, 10, 108, 172, 173—in united school district, 16—contracts of, 108—how entered into, 108, 109—when seal to be used, 108—when need not be used, 108, 109—member may contract with board without profit to himself, 19—penalties on member contracting for profit with board, 19—how enforced, 19, *n* (*k*)—contributory district, 18, 181—how elected, 18—election of members by, 181—a corporate body, 10, 108—damages, when members indemnified against, 25.

SCHOOL BOARD—*continued.*

Day industrial school, 100—contributions towards, 100—establishing or building school, 101—consent of Secretary of State, 101—borrowing in respect of, 101—power over, 102—when deemed to have been duly convened and held, 25—deficiency in accommodation, 9, 11—when to supply, 9, 10—when school board to be formed to supply, 12—when board so formed will be deemed "in default," 12—delegation of powers, 57—to managers, 57—who are, 57—cannot delegate power of raising money, 57—disqualification of member, 174—application for, 33—when to be made, 33—when may be dissolved, 32, 89, 246—in default, 32—not performing their duties, 32—other grounds, 32, 33—under certain circumstances, 246—disposal of property on dissolution, 33—liabilities of board, 33—how discharged, 33—not to affect subsequent formation of board, 33—different districts of, 201—duties of, 24, 58—board not performing, 32—where board fail to perform certain duties, 58—Department may send a requisition, 59—if board fail to comply with requisition, 59—board deemed "in default," 59.

Effect of subsequent appointment, 243—"efficiency" of schools, 59—board to maintain, 59—what is, 59—election of, 173, 212—elected for three years, 18—method of voting at election, 18—elected by Education Department, 23—when Department may elect, 23, 24—election of members, 202—rules respecting, 202, 204—who may vote at election, 18—in borough, 18—in metropolis, 35, 36—in parish not in Metropolis, 18—who are disqualified from voting at election, 18—when board not elected, 23, 174—election in a district, 14—regulations as to, 14, 222—election of members, 223—rules respecting, 223—when board may be elected to supply school accommodation, 9—when members deemed to have been duly qualified to act, 25.

Failure to elect at triennial election, 24, 40—retiring member may be deemed to be re-elected, 24—board deemed "in default," 40—when no members elected, 24—Department may appoint another day for the election, 24—endowment or charity, 145—when school board

SCHOOL BOARD—*continued.*

may become trustees of, 145—expenses, 182—how met, 182, 183—expenses of election, 21—taking poll, 21. *See also* "Election."

Extract from board's books or documents, 114—failure to perform duty, 239—fees at board school, 119—payment by guardians, 119—not deemed parochial relief, 120, *n* (*a*)—remission by board, 119—not deemed parochial relief, 119, *n* (*i*)—may remit school fees, 95—fee, wrongfully demanding, 114—finances, management of, delegated to managers, 150—formation of, 162—for what purposes to be formed, 10—formation without inquiry upon application, 162, 214—formation by Department without existence of any school deficiency, 12—when deficiency is imminent, 12—formation of united school district, 15—condition of forming, 15—free places, supply of, 142, 143—when new board may be appointed to supply, 143—failing to supply free places, 143—may be deemed in default, 143—when additional grant may be made, 120—hire or lease of premises which are private property, 60—illegal employment of child, 227.

Income, no loan to be raised to meet current expenses, 116—formation of school fund, 116—fund, how derived, 116—sum required to meet deficiency of school fund to come out of local rate, 116—deficiency, 116—procedure to obtain relief from rating authority, 116—powers of local authority to levy rate or raise money by other means, 117—school rate, when to be levied, 116—to print statement of income and expenditure, 156—to whom to send copies, 156—publication in newspapers, 156—incorporation of borough, 262—effect on, 262, 263—in default, 21, 24, 32, 39, 42, 91, 187. *See* "In Default."

Industrial school, 100, 258—powers of board, 258—borrowing powers, 258—contributions towards establishing, building, or maintaining, 100—whose consent necessary, 100—powers as to, 100—contributions towards enlarging, altering, &c., 100—establishing or building school, 101—purchase of land for site, &c., 101—consent of Secretary of State, 101—public notice,

SCHOOL BOARD—*continued.*

101—expenses in sending child to industrial school, 105—inspection of board's books and documents, 114, 197—land, lease of, 59—for school accommodation, 61—purchase of, 59—law costs, when members indemnified against, 25—legal proceedings, 106—appearance by, 196. *See* "Legal Proceedings."

A local authority, 70. *See* "Local Authority"—local authority appointed for same district as, 79—when authority to cease to act, 79—every question to be decided by majority of votes, 24.

Maintenance of schools, 163, 164—of sufficient school accommodation, 164, 165—to "maintain and keep efficient" every school, 58—schools, management of, 163—managers appointed by, 57, 163, 208—number of, 57—proceedings of, 208—meetings, regulations as to, 25—To meet for despatch of business, 24—members, when indemnified against law costs and damages, 25—when incur no pecuniary responsibility for acts as such, 107—when responsibility is incurred, 107—member should not adjudicate on board summons, 91, 112—presumption that all members qualified to act, 115—retirement of member, 202—rules respecting, 202, 204—minutes of meeting, 25, 115—how received in evidence, 25, 115—to be signed by the chairman, 115—meeting, 115—presumption that it has been duly convened and held, 115—names of members voting to be recorded, 24—number of members, 10, 18—Education Department to determine, 10—when number reduced to less than number required for a quorum, 21—Education Department to proceed as if board in default, 21—or direct an election, 21—miscellaneous powers of board, 171.

Officers, 25, 26, 27—appointment of, 25, 26, 175—two or more boards may arrange, 26—board may pay expenses of candidates, 26—offices, 60, 247—when to be provided, 60, 247—small parish added to another parish, 18—board how elected, 18—persons disqualified from being members, 18—members accepting place of profit, &c., 18—exceptions, 19—guilty of corrupt practices, 19—bankrupt, 19 — absent member, 20 — member punished for a crime, 20—powers for providing schools, 165—when board exercise power of prison

SCHOOL BOARD—*continued.*

authority, 215—proceedings, 206, 224—how regulated, 224, 206–208—proceedings not to be vitiated by disqualification in election of member, 23—must be a quorum, 23—quorum, 24—not less than three, 24—in metropolis not less than nine, 24—when not sufficient number to form, 23—none by reason of non-election, resignation, &c., 40—board declared "in default," 40.

Rate, demand by board to local authority necessary, 117—question whether amount specified by the board is legally required, how to be raised, 117 — separate rate by overseers, no allowance or publication necessary, 117—rateable value to be ascertained by last poor rate valuation, 118—how much to the pound to be specified if included in rate for other poor law purposes, 117—real or personal property given as endowment, 145, 146—school board may accept, 145, 146—refusing or neglecting to act, 40—deemed "in default," 40—remedy when rating authority makes default, 183—requisition to provide schools, 162 — proceedings in default, 162—neglect of regulations of public elementary schools, 164—re-transfer of school from board to managers, 50, 51, 171. *See* "Re-Transfer"—returns to Education Department, 52—returns by, 198—returns of registrars of births and deaths to, 238—returns by schools to, 218—sale of parish property, 60—application of proceeds, 60—may sell, lease, or exchange land, 69—schools rateable to relief of poor, 70—in school district, how created, 12—different ways of forming school districts, 17—in school district included in united school district, 15—may be dissolved, 15—property, &c., how dealt with on dissolution, 15—seal, to have a common, 10, 108—security for provisions of Act being carried out, 91—separate board for contributory district, 18—service of notices, &c., on, 108—site of school, change of, 59—sites, purchase of land for, 61, *et seq.* *See* "Land"—sites, compulsory purchase of, 165-168—stock and stores account, 150—succession, to have a perpetual, 10, 108—transfer of premises to, 43–50, 169, 170—treasurer's account, 150. *See* "Treasurer"—triennial retirement fixed by Education Department, 21.

In united school district, 180—how created, 12—united

SCHOOL BOARD—*continued.*

school district, election of board in, 18, 180—by whom prescribed, 16—urban sanitary authority, separate school attendance committee, 92—appointment, 92—when may be appointed, 92—voting at meetings, 24. *See also* "London, School Board for."

SCHOOL DISTRICT,

Accommodation available for neighbouring district, 17—unnecessary to provide for neighbouring district, 17—when Education Department determine whether there is a deficiency in, 10—how ascertained, 11—in public elementary schools, 4—deficiency in school accommodation, 9—how remedied, 9—supply of, 9, 10—deficiency in accommodation imminent, 12—school board may be created, 12—application to Department, how made, 13—meeting of ratepayers as to, 13—how summoned, 13—resolution of meeting, 13—when there may be a poll, 13—deficiency, resolution, how passed, 14. *See* "Accommodation"—compulsory attendance in, 80—borough is, 4—contributory district, 17—one district providing schools for another district, 17—procedure as to, 17—different kinds of, 201—establishment of school board in, 10—four ways of forming, 17—included in united school district, 15—jurisdiction of local authority extending into several districts, 79.

Metropolis is, 4—Oxford, local board district, 4—when parent living in free school district may still have to pay for education of child, 144, *n* (*b*)—parish or group of parishes is, 4—part of parish constituted a, 249—persons applying for formation of, 55—may claim a public inquiry, 55—provision of free places in schools, 143—rateable value, what is, 118—school board created to supply school accommodation, 11—when deficiency in school accommodation imminent, 12—school board district, compulsory attendance in, 80—small or sparsely populated, 122, 126—special grants to schools in, 126—in addition to ordinary annual grant, 127—when school in not deemed unnecessary, 122—"stock-taking" of schools, 52, *n* (*a*)—supply of schools, 159, 160—when voluntary schools may pay fee grant into common fund, 144—distribution of fund, 144—what is, 4, 159.

SCHOOL FUND,

In contributory district, apportionment of, 183—deficiency in, 42—to be raised out of the rates, 42, 182—expenses of board "in default," 41—loan may be raised to meet, 41, 42—expenses of election and taking poll to be paid out of, 21—expenses of officer in causing child to be sent to industrial school, 105—inquiry as to taking land compulsorily, 67—costs of, 67, 68—become a charge on, 68 — may be paid by instalments, 68 — loan, 213 — for what purpose, 213—loans, on security of, 28, 29—London School Board, 37—deficiency in, 37—rate, how levied, 37, 38—what moneys to be paid into, 182—united school district, apportionment of, 183—what is, 182. *See also* "Common Fund," "Special Common Fund."

SCHOOL HOUSE,

Debt on, 28—providing or enlarging, 28—board may borrow for, 28—lease of, 168—sale of, 168—when cannot be legally mortgaged, 44—supply of, by board, 59—transfer of, to school board, 43. *See* "Transfer"—used for an election, 123—what is, 159.

SCHOOLMASTER,

Fees received by, 150—to keep a school fees account, 150. *See also* "Teacher."

SCHOOLMISTRESS,

See "Teacher."

SCHOOL PREMISES,

Removal of teacher from, 197. *See also* "School House."

SCHOOL YEAR,

See "Year."

SCIENCE,

Teacher in, 142.

SCIENCE AND ART, DEPARTMENT OF, 1.

SEAL,

London School Board, 35—school board to have a common seal, 10, 108—when contracts to be made under, 108—when need not be under seal, 108, 109.

SECRETARY OF STATE,
Borrowing by school board, 28—for industrial school, 28—consent to local board establishing, &c., an industrial school, 100—industrial schools, 88—may remit payment ordered to be made by parent, 88—school board undertaking the building, &c., of industrial school, 101—consent required, 101—who is, 249.

SEPARATE SCHOOL ATTENDANCE COMMITTEE,
Appointment of, 92—jurisdiction of, 92.

SERVICE, 195,
Certificates, notices, orders, &c., on school board, 108—on managers of voluntary schools, 108. *See also* "Certificate," "Notice," "Order."

17*s.* 6*d.* LIMIT,
Expenditure, normal rate of, 128—when school exceeds, 128—fee grant *paid* or *payable* to be reckoned as school pence, 128—where final instalment of grant in arrear, 128—grouping of schools for financial assistance, 142—contributions not to affect, 142—managers of neighbouring schools may pay fee grant into common fund, 144—distribution among contributories, 144—not to affect 17*s.* 6*d.* limit, 144—history of, 127, 128—special grant in addition to parliamentary grant, 127—not to be included in parliamentary grant for purposes of, 127—what is, 127, 128.

SICKNESS,
Absence of child through, 93—of child an excuse for non-attendance at school, 81, 88—of father or mother, no excuse for non-attendance of child at school, 96.

SINKING FUND,
Object of, 28—when to be established, 28.

SITE,
Closed churchyard, 60—compulsory purchase by school board, 165 *et seq.*—regulations as to, 165, 166—industrial school, 32, 101—petition to Department as to compulsory purchase, 166—purchase of land by managers of elementary school, 168—of school, change of, 59—School Sites Acts, 209—valuer appointed for inclosure of common may allot land for, 60.

SITE—*continued.*
Purchase of land for school sites by board, 61—by agreement, 62, 63—purchase of school sites by managers, 69. *See also* "Land."

SOUTHWARK,
School board division, 34—boundaries of, 34—number of members, 34.

SPECIAL COMMON FUND,
Expenses of school attendance committee, 77—who to contribute to, 77—contribution, 77—assessing contribution, 77—how raised, 77—may issue orders to overseers, 77—duties of overseers, 78.

SPECIAL GRANT,
Schools in small or sparsely populated districts, 126—in addition to ordinary annual grant, 127—not to be included in annual grant with reference to 17*s.* 6*d.* limit, 127—when made to school, 122.

STAMP,
Mortgage, 30—transfer of mortgage, 30.

STAMP DUTY,
None on appointment of officers of school board, 25, *n* (*p*), 26.

STANDARD,
Proficiency in reading, writing, and elementary arithmetic, 251—previous due attendance at school, 251—for purpose of employment, 251, 252.

STATIONERY OFFICE,
Documents printed under superintendence of, 115, *n* (*l*).

STATUTORY DECLARATION,
To accompany petition for land to be taken compulsorily for school sites, 66.

STOCK,
Stock and stores account of each school, 150—what to contain, 150—London School Board, power to create consolidated stock, 38.

STOCK-TAKING,
Of schools of every district, 52, *n* (*a*).

STORES,
Stock and stores account, 150—what to contain, 150.

SUBSCRIBERS,
To voluntary school, 46—"annual subscriber," 46—consent to transfer of school, 46—to be in general form, 46.

SUCCESSION,
Of London School Board perpetual, 35—of school board, 10, 108.

SUMMARY JURISDICTION ACTS,
What are, 220.

SUMMARY JURISDICTION, COURT OF,
Age of child, 111—onus of proof, 111—attendance of child, how ascertained, 111, 112—child may be ordered to be produced before court, 110—how constituted, 110—where union extends into different counties, 110—defendant, who may appear for, 112—member of board should not adjudicate on board summons, 112—order may be made instead of inflicting penalty, 110—persons offending against the "wastrel clause," 87—when parents may be summoned, 87—when children may be summoned, 87—when an "attendance order" may be made, 87—proceedings, how to be instituted, 112—proceedings, how regulated, 110—what proceedings may be taken, 112—whether school efficient, 111. *See also* "Justices," "Legal Proceedings," "Summary Proceedings."

SUMMARY PROCEEDINGS,
Court of summary jurisdiction, 221—recovery of penalties, 198—regulations as to, 110-112. *See also* "Legal Proceedings."

SUMMONS,
For alleged infringement of bye-laws, 91—how served, 91—member of authority should not adjudicate on, 91.

SUMMONING OFFICER,
When to call meeting in school district as to school accommodation, 13—requisition to call a meeting, 13—when to take a poll, 14—who is, 13.

SUNDAY SCHOOL,
When attendance at, not to be necessary, 5.

SUPPLY OF SCHOOLS, 4-10, 159.
What accommodation to be provided, 7, 8—proportion of population to accommodation, 8—when additional accommodation required, 8—school boards to be primary judges of accommodation required, 8—borrowing by school board, 28—in case of deficiency, 160—dissolution of board, 32—when sufficient accommodation for the district, 32, 33—who may supply after decision of Department, 12—efficient and suitable provision, 6, 7—failure to make by school board, 39—board deemed "in default," 39—in Metropolis, 36—proceedings for supply of, 161-163—school districts, county divided into, 4—sufficiency or deficiency really rests with Education Department, 9—who has the prior right to supply, 9.

SURCHARGE,
Penalty for improper payment of, 187. *See* "Accounts," "Audit," "Auditor."

T.

TEACHER,
Appointment, 26 — salary, 26 — tenure of office, 26 — to give up possession of premises on quitting service of board, 27—appointment or dismissal of, must be stated in business notice, 25—returns to Department, 53—duty as to filling up forms, 53—cookery, 124—organising teacher, 124—drawing, 124—drill, 124—laundry work, 124—manual instruction, 124—principal duties of, 123—to be certificated, 122—exceptions, 122—payment of, 122—when liable for complying with directions of his board, 107—removal from premises, 196, 197—who is, 159.

THIEVES,
Reputed, child frequenting the company of, 104—child may be sent to industrial school, 104—or day industrial school, 180.

TIME TABLE,
Public elementary school, 122, 160—approval by inspector, 122—to be put in public elementary school, 5—what to contain, 5, 6.

TOWER HAMLETS,
School board division, 34—boundaries of, 34—number of members, 34.

TRANSFER,
Arrangement by managers with board to transfer school, 45—how made, 45, 46—when there is an instrument declaring trusts of school, 45—where no instrument, 45—where no custom usual, 46—consent of Education Department, 46—where annual subscribers, 46—to be in general form, 46—conclusive evidence that arrangement has been made in conformity with the Act, 49—what it may provide, 49—what it may not provide, 49, 50—conditions of transfer, 43—when consent of Department is required, 43—when not required, 43—when may be transferred without consent of persons contributing to establishment of school, 48, 49—Department, no power to compel transfer of any school, 45—can only consent on terms agreed, 45—endowment of school, 145—expenses of maintenance of school up to transfer, 44—who liable for, 44—where fittings, furniture, books, &c., are private property, 50—where private person has independently of Act legal power to sell, 43—intention of Legislature as to, 44—managers, position of, on transfer of school to board, 43—can only transfer school in order to relieve them from the responsibility of maintaining it, 44—mortgage on school premises, 44—when protected, 44—objections and representations respecting, 47, 48—by trustee not a manager, 47—by persons who have contributed to establishment of school, 48—persons or societies who have contributed to establishment of school, 48—terms of arrangement to be shown to them, 48—their objections and representations to be considered, 48—views of board and managers thereon, 48—school may be transferred without their consent, 48, 49—of premises to school board, 43, 169, 170—what property managers can transfer, 44, 45—points to be considered, 45—where school vested in trustees, 43—recourse to be had to

TRANSFER—*continued.*
section 23 of Act of 1870, 43—trust, express or implied, 46—where premises held on, 46—rules to be observed, 46, 47—payments to be made, 47—questions relating to title, 46—terms of arrangement to be proper and reasonable, 47—where express power of alienation, 47—trustee not a manager, 47—terms of arrangement to be shown to him, 47—his objections and representations to be considered, 47—school board and managers to report to Department on same, 47—school transferred to be deemed a "school provided by the school board," 50. *See also* "Re-transfer."

TREASURER,
Of school board, 150—accounts, 27—what to contain, 150—to be balanced quarterly, 150—where to be kept, 27—when to be laid before board, 150—when may be dispensed with, 150—appointment of, 26—two or more boards may arrange, 26—banker's pass-book, 150—when to be laid before auditor, 150—where school board has delegated management of finances to managers, 150—appointment of person to keep accounts, 150—accounts, how kept, 150—when to be closed and balanced, 150—duties, 26—parliamentary grant, receipt for, 124—qualification, 27—*quo warranto* not willingly granted, 26—salary, 27—gratuities illegal, 26, *n* (*c*)—tenure of office, 26.

TRUST,
Transfer of premises held on express or implied trust, 46—rules to be observed, 46, 47—payments to be made, 47—questions relating to title, 46—terms of arrangement to be proper and reasonable, 47—where express power of alienation, 47—when school board may act as trustees, 145, 146—purposes of trust not to be inconsistent with Act of 1870, s. 14, 146.

TRUSTEE,
Elementary school vested in, 43—transfer of, to board, 43—not manager of school, 47—terms of arrangement for transfer of school to be shown to him, 47—his objections and representations to be considered, 47—school board and managers to report to Department on same, 47—can only make objections and representations, 49—when school board may act as trustees, 145, 146.

U.

ULTRA VIRES,

Bye-laws *ultra vires*, 92—cases of, 92—members of board acting *ultra vires*, 107—Orders, &c., of Education Department, 2.

UNION,

Meaning of, 220—when clerk to act as "returning officer," 13—extending into different counties, 79, 91—before what justices defaulter to be summoned, 91. *See also* "Guardians."

UNITED SCHOOL DISTRICT,

Deficiency in accommodation imminent, 12—school board may be created, 12—application to Department, how made, 12—dissolution of, 179—evidence of, 16, 180—Department may dissolve existing school board in a school district included in, 15—may make all necessary changes, 15—may deal with property, &c., 15—difficulty as to real property, 15—formation of, 14, 55, 178—arrangements on, 180—conditions of formation, 178, 179—evidence of, 15, 16, 180—inquiry by Department, 15—notice to unite, 15—appeal by persons aggrieved, 15—consideration by Department, 15—formation or dissolution of, 55—persons feeling aggrieved by, 55—may claim public inquiry, 55—object of forming, 15, *n* (*h*)—by whom presented, 16—notice as to formation or dissolution of, 16—appeal against, 16—public inquiry, 16—name of, 16—number of members of board, 18—alteration of, 18—members, how elected, 18—orders forming, what to contain, 18—parish too small may be added to another parish, 16, 180—public inquiry, 179—local rate in, 15—resolution, how passed, 14—rating authority for, 15—school board created in, 11, 12—school board in, constitution of, 180—election of school board in, 180—formation of school board in, 14—to be a school district, 14, 15—school fund in, 183.

UNNECESSARY,

Public elementary school not to be, 129—in sparsely populated district, 122—when deemed unnecessary, 122—grant refused because school unnecessary, 122—reasons to be laid by Department before Parliament, 122.

URBAN SANITARY AUTHORITY,
School attendance committee, 71, 78—appointed by, 241—when to appoint, 71—expenses of, 78—out of what rate payable, 78—day industrial school, 100—contributions towards, 100—when committee may elect members of committee of union, 71—separate school attendance committee, 92—appointment by Department, 92—when may be appointed, 92. *See also* "Sanitary Authority."

V.

VACANCY,
Board appointed by Department, 40—how filled up, 40—casual vacancy in school board, 247—how filled up, 247, 248—caused by board declared to be "in default," 41, 42—how filled up, 41, 52—chairman or vice-chairman, 25—disqualification of members, 18 *et seq.*—rules as to election, 255. *See* "Casual Vacancy."

VAGABOND,
Vagabond child, 96—child in company of, 87.

VALUATION LISTS,
In Metropolis, 37, 216—rateable value, 195—production of, to school board, 195.

VALUE,
See "Rateable Value."

VESTRY,
Definition of, 159.

VICE-CHAIRMAN,
Casual vacancy, 25—school board, 24—appointment of, 24—equality of votes, 24.

VICE-PRESIDENT OF COUNCIL,
May be member of House of Commons, 1—salary, 1. *See also* "Education Department."

VOLUNTARY SCHOOL,
Accommodation, deficiency in, 9—who has the prior right to supply, 9, 10—appeal by managers as to public school accommodation required in district, 11—accounts of managers, 98—grouping of for financial assistance, 142—what schools may be grouped, 142—how one school may financially assist another, 144—fee grant, 144—

VOLUNTARY SCHOOL—*continued.*
in same or neighbouring district, 144—may pay grant to a common fund, 144—for distribution among contributory schools, 144—17*s.* 6*d.* limit not affected, 144—fees, payment by guardians, 119, 120—inspection of school, 98, 99—inspection by Her Majesty's inspector, 98—inspection by inspector not one of Her Majesty's inspectors, 194—inspection in religious and other matters, 99—notice as to inspection, 99—publication of, 99—when scholar may be withdrawn from attendance, 99—when to conform to requirements of board school, 98—parliamentary grant, 121—no parliamentary grant in aid of building, enlarging, &c., 99. *See* "Parliamentary Grant"—when to be reckoned as public elementary school, 10—purchase of land by managers, 98—service of notices, &c., on managers, 108—17*s.* 6*d.* limit, 127, 128—transfer to school board, 43, 98—re-transfer from board to managers, 51, 98. *See* "Transfer," "Re-transfer"—what is, 98. *See also* "Elementary School," "Public Elementary School."

VOTER,
London School Board, 35, 36—in City of London, 35—in other divisions of Metropolis, 36—at school board election, 20—voting to be by ballot, 20, 21—counting of votes at election, 22.

W.

WARRANT.
See "Distress Warrant."

WASTREL CLAUSE,
Who are affected by it, 87.

WENLOCK,
School district, 4.

WESTMINSTER,
School board division, 34—boundaries of, 34—number of members, 34.

WOMAN,
May be chairman of board, 24, *n* (*i*)—a ratepayer for school board purposes, 13, *n* (*k*)—may be member of school board, 18—cannot vote at election in City of London, 36.

WORKHOUSE,
When child not to be required to attend school as condition of relief to parent out of, 260—pauper parent not in, 120—payment by guardians of school fees, 120—workhouse school not an elementary school, 5, *n* (*c*).

WORSHIP. *See* "Religious Worship, Place of."

WRITING,
Standard of proficiency, 251—for purpose of employment, 251.

Y.

YEAR,
School attendance during, 123—annual grant becomes due at end of, 126—instalments of grant, when to be paid, 126—how often school to be open, 132—what is, 268.

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	Do. name of Union printed in "	
307*a*	**Do.** with blotting - - -	
307*b*	**Do.** with flap and linen back and paper - - - - -	
307*c*	**Do.** showing Attendance for [illegible] with flap, linen back, and blottin[illegible]	
	Do. for Families -	
308	**Cloth-lined Envelopes,** to conta[illegible]	
309	**Relieving Officer's** Register [illegible] by J. Dolby, Esq., Au[illegible] Staffordshire Distric[illegible]	
4	**Notice** by Relieving O[illegible] ceased to be [illegible] counterpart [illegible]	
3	**Quarterly Acco**[illegible] union	
3*a*	**Do.**	
3*b*	**Claim for** [illegible] Fe[illegible]	

Do